

FILED DATE: 11/13/2018 11:03 AM 2018CH14151

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

FILED
11/13/2018 11:03 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH14151

Illinois Land Title Association,)
)
Plaintiff,)
)
v.)
)
Karen A. Yarbrough, not personally,)
but solely in her capacity as)
Cook County Recorder of Deeds,)
)
Defendant.)

No. 2018CH14151

Complaint for Mandamus

Plaintiff, the Illinois Land Title Association (ILTA), by its attorneys, complains of Defendant, Karen A. Yarbrough, not personally, but solely in her capacity as Cook County Recorder of Deeds (the Recorder), as follows:

1. The ILTA is a not for profit organization that has been serving the land title evidencing industry in Illinois for over 100 years.
2. The ILTA serves as an educational vehicle for agents, abstractors and underwriters through its industry specific title school, and is the only Association in Illinois that represents the legislative interests of, and monitors judicial decisions for, its members and the citizens of this State on issues of land title evidence and business concerns. See www.illinoislandtitle.org.
3. The constituent members of the ILTA include title insurance companies, agents, and attorneys that regularly record documents in the public real estate records of the various counties in Illinois, including Cook County, to, among other things, document the ownership of, and transactions related to, Illinois real estate, including documents involving heirs such as those that are the subject of this Complaint.
4. The Recorder is the public official responsible for the recording of documents entitled to

be recorded in the public real estate records of Cook County, Illinois (the "Public Record").

5. Illinois law imposes a duty on the Recorder to record certain documents in the Public Record.

6. In particular, 55 ILCS 5/3-5010 provides:

Duties of recorder. Every recorder shall, as soon as practicable after the receipt of any instrument in writing in his office, entitled to be recorded, record the same at length in the order of time of its reception, in well bound books to be provided for that purpose.

7. Under Section 28 of the Conveyances Act, 765 ILCS 5/28:

Deeds, mortgages, powers of attorney, and other instruments relating to or affecting the title to real estate in this state, shall be recorded in the county in which such real estate is situated.

8. As described more fully below, the Recorder is breaching her duty to record deeds and other instruments relating to or affecting the title to real estate in this State in accordance with 55 ILCS 5/3-5010 and 765 ILCS 5/28 by refusing to record Heirship Deeds or Affidavits of Heirship in the Public Record unless they are accompanied by a certified Court Order declaring Heirship.

9. In or about April 2018, the Recorder issued the Affidavit of Heirship and/or Survivorship Notice attached hereto as Exhibit 1 (the "Notice").

10. In the Notice, the Recorder asserted "that documents titled '**Affidavit of Heirship**' and/or '**Affidavit of Survivorship**' (and other similarly named docs) were being recorded by customers who had not first exhausted the Illinois Statutory & Circuit Court Process."

11. The Notice included copies of 755 ILCS 5/5-3 and Cook County Circuit Court Rule 12.2, as "the Illinois statute & the Cook County Circuit Court rule regarding documents with such titles."

12. The Notice indicated that the Recorder's "Offices will **NO LONGER** accept any

document titled ‘**Affidavit of Heirship**’ or ‘**Affidavit of Survivorship**’ (and other similarly named docs) for recording unless it is a **CERTIFIED COPY** from the Circuit Court.ö

13. Consistent with the Notice, the Recorder refused to record in the Public Record Affidavits of Heirship or Affidavits of Survivorship (collectively ‘Heirship Affidavits’) unless they were accompanied by a certified copy of a Court Order establishing heirship consistent with the Affidavits (an ‘Heirship Order’).

14. In addition, the Recorder refused to record in the Public Record deeds in which the grantor or grantee is an heir, descendant, or legatee or has a similar designation (‘Heirship Deeds’) without an Heirship Order.

15. The ILTA, title insurance companies, title insurance agents, and real estate practitioners, on behalf of themselves and their customers, objected to the Recorder’s actions (collectively, the ‘Heirship Procedures’) because they were contrary to Illinois law and prevented the public and the title insurance industry from placing the interests of heirs in the Public Record at the earliest practicable date and required heirs to incur the additional expense and delay of obtaining an Heirship Order that was not statutorily required or necessary.

16. On May 1, 2018, Recorder’s Chief Legal Counsel, James Gleffe, responding to communications from the undersigned counsel who had been retained to challenge the Recorder’s Heirship Procedures, indicated in an email that the Recorder’s ‘office is seeking a State’s Attorney opinion on the matter. In the meantime, the Recorder of Deeds Office will not be recording any of these documents while our request is pending.’ A copy of the foregoing email exchange is attached to this Complaint as Exhibit 2.

17. Because Mr. Gleffe would not identify the Assistant State’s Attorney (‘ASA’) responsible for the foregoing opinion, on May 9, 2018, the undersigned counsel sent a letter to

the ASA c/o Mr. Gleffe objecting to the Recorder's Heirship Procedure. A copy of the May 9, 2018 letter is attached to this Complaint as Exhibit 3.

18. Approximately six weeks later, on June 21, 2018, in the absence of a response from Mr. Gleffe or the ASA, and after being directed by the State's Attorney's Office to ASA Alvin Portis, the undersigned counsel sent a letter to ASA Portis to determine the status of the State's Attorney's opinion and seek a prompt resolution of the dispute over the Heirship Procedures. A copy of the June 21, 2018 letter is attached to this Complaint as Exhibit 4.

19. Upon information and belief, sometime prior to July 25, 2018, ASA Alvin Portis provided the State's Attorney's opinion on the Heirship Procedures to the Recorder or her representatives.

20. On July 25, 2018, representatives of First American Title Insurance Company, Attorney's Title Guaranty Fund, Inc., Chicago Title Insurance Company, and AmTrust Title met with ASA Portis in an attempt to resolve the dispute over the Heirship Procedure.

21. Following that meeting and their subsequent communications between seeking to resolve the dispute, on September 13, 2018, ASA Portis indicated by email that the Recorder was going to implement the procedures set forth in that email, including the recording of the following documents without Heirship Orders: Heirship Deeds, Affidavits of Heirship that include a disclaimer on the Affidavit making clear that there has not been a judicial determination regarding the Affidavit, and Affidavits of Intestate Distribution. A copy of ASA Portis's September 13, 2018 email is attached to this Complaint as Exhibit 5.

22. Although the foregoing resolution was acceptable to the title companies whose representatives attended the July 25th meeting, by email dated September 24, 2018, ASA Portis indicated that, although the Recorder would begin accepting Heirship Deeds

without Heirship Orders immediately, the Recorder wanted to conduct a final internal review within the next week concerning the recording of Heirship Affidavits. A copy of ASA Portis's September 24, 2018 email is attached to this Complaint as Exhibit 6.

23. However, neither the Recorder nor ASA Portis addressed the potential resolution of the Heirship Affidavit issue within a week, or even the following month.

24. Then, on November 5, 2018, Mario A. Reed, Esq., the Recorder's Director of Public Information, sent an email to Howard Samson at Greater Metropolitan Title, LLC entitled "Sorry for the confusion, but nothing has changed." Despite the Recorder's prior agreement to record Heirship Deeds without requiring proof of the entry of Heirship Orders, Mr. Reed's email stated "that the Honorable Karen A. Yarbrough herself has reaffirmed the Office's previous position of NOT ACCEPTING Heirship Deeds or Affidavits of Heirship UNLESS they are accompanied by a Certified Order Declaring Heirship." A copy of Mr. Reed's November 5, 2018 email is attached to this Complaint as Exhibit 7.

25. Later that day, James Gleffe, the Recorder's Chief Legal Counsel, confirmed that "the Recorder's Office is not going to record Heirship Deeds or Affidavits of Heirship unless they are accompanied by an Order declaring Heirship. This procedure is currently in effect." A copy of the foregoing email is attached to this Complaint as Exhibit 8.

26. As a result, as of November 5, 2018, the Recorder has made it clear that she is not going to record Heirship Deeds or Heirship Affidavits unless Heirship is first proven in a court of law.

27. This directly impacts the constituent members of the ILTA, their customers, and the public at large because real estate transactions have closed, and will continue to close, involving Heirship Deeds and Heirship Affidavits that they cannot record in Cook County without expending the time and money needed to obtain an Heirship Order.

28. Not only does the Recorder not have the discretion to impose such an obligation, but her actions violate her statutory recording duties.

29. As set forth above, under 55 ILCS 5/3-5010, the Recorder "shall record documents entitled to be recorded."

30. Further, under Section 28 of the Illinois Conveyances Act, 765 ILCS 5/28, documents entitled to be recorded include "deeds" and other instruments relating to or affecting the title to real estate in this State.

31. Section 28 of the Conveyances Act makes no distinction between a deed that identifies the grantor as an heir of the record owner and one that does not.

32. In fact, the legislature specified a permissible form of deed in Section 9 of the Conveyances Act, 765 ILCS 5/9, and provided that "Every deed in substance in [that] form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to the grantee, his heirs or assigns," thus leaving no room for discretion by the Recorder concerning the recording of deeds that follow that form.

33. Moreover, although Section 28 of the Conveyances Act does not specifically refer to Heirship Affidavits, such Affidavits (to the extent that they purport to pertain to ownership interests in real property) clearly relate to or affect the title to real estate, and thus fall within the catchall provision of Section 28 of the Conveyances Act.

34. The legislature imposed the foregoing mandatory duty on the Recorder to record documents relating to or affecting the title to real estate to allow parties claiming interests in land to provide the public with constructive notice of their claimed interests expeditiously because, under Section 30 of the Conveyances Act, such notice takes effect only upon recording.

35. As stated in 765 ILCS 5/30:

All deeds, mortgages and other instruments of writing which are authorized to be recorded, shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record.

36. Neither of the provisions referenced in Notice, 755 ILCS 5/5-3 or Cook County Circuit Court Rule 12.2, give the Recorder the discretion or the authority to ignore the foregoing statutory mandate to record documents related to or affecting the title to real estate "as soon as practicable after the receipt of any instrument in writing."

37. To the contrary, the Recorder's reliance on 755 ILCS 5/5-3 and Cook County Circuit Court Rule 12.2 is misplaced.

38. In particular, section 5-3(a) of the Probate Act, 755 ILCS 5/5-3(a), says that a court "may ascertain and declare the heirship", not that the court must declare heirship. (emphasis supplied).

39. Similarly, Circuit Court Rule 12.2 does nothing more than describe the procedure to be followed if a person pursues a judicial determination of heirship.

40. Not only is section 5-3(a) of the Probate Act permissive, but no judicial determination of heirship is even contemplated where there is an intestate passage of title to descendants under Section 2-1 of the Probate Act, 755 ILCS 5/2-1, which begins as follows (before listing the order of intestate passage of title): "Rules of descent and distribution. The intestate real and personal estate of a resident decedent and the intestate real estate in this State of a nonresident decedent, after all just claims against his estate are fully paid, descends and shall be distributed as follows:"

41. Contrary to the position being taken by the Recorder, descendants are not required to obtain a judicial determination of their rights as an heir under this statutorily specified lineage.

42. Further, where a question concerning heirship arises, a court proceeding is only one of the ways to prove heirship.

43. In particular, as set forth in Section 5-3(c) of the Probate Act, 755 ILCS 5/5-3(c): “An order of the court declaring heirship is prima facie evidence of the heirship, but any other legal method of proving heirship may be resorted to by any party interested therein in any place or court where the question may arise.” (emphasis supplied).

44. As a result, the Recorder’s Heirship Procedures that require a judicial determination of heirship directly contravene the express legislative intent evident from the Probate Act, which provides that a court “may ascertain and declare the heirship” and that heirship also may be established by “any other legal method í in any place or court.” (emphasis supplied).

45. If the legislature had wanted to mandate that heirship be established in a court of law (for recording purposes or otherwise), it could have done so.

46. Absent such a requirement, the Recorder lacks the authority or the discretion to require an heir to obtain a judicial determination of heirship as a prerequisite to recording instruments that refer to heirship.

47. The legislative expression of the Recorder’s statutory duty to record all instruments received by her relating to real estate also is evident from the recently enacted Fraud and Referral Review statute, 55 ILCS 5/3-5010.5.

48. In that Act, the legislature established a process for county recorders to follow when they have a concern about a particular document that “cause[s] the recorder to reasonably believe that the filing may be fraudulent, unlawfully altered, or intended to unlawfully cloud or transfer the title of any real property.” 55 ILCS 5/3-5010.5(c).

49. As set forth at 55 ILCS 5/3-5010.5(d) and (g), this procedure applies after the Recorder has recorded a document that he or she is statutorily required to record, by providing for an internal review and reference to an administrative law judge after notice to, and request from, the

last owner of record of the document as follows:

(d) Determinations. If a recorder determines, after review by legal staff and counsel, that a deed or instrument that is recorded in the grantor's index or the grantee's index may be fraudulent, unlawfully altered, or intended to unlawfully cloud or transfer the title of any real property, he or she shall refer the deed or instrument to an administrative law judge for review pursuant to subsection (g) of this Sectioní .

(g) Referral and review process. Prior to referral, the recorder shall notify the last owner of record of the document or documents suspected to be fraudulent. The person, entity, or legal representative thereof shall confirm in writing his or her belief that a document or documents are suspected to be fraudulent and may request that the recorder refer the case for review. Upon request, the recorder shall bring a case to its county department of administrative hearings and, within 10 business days after receipt, an administrative law judge shall schedule a hearing to occur no later than 30 days after receiving the referralí .

50. Clearly, if the legislature had wanted to give the Recorder the discretion to reject questionable documents before recording, it could have.

51. However, it did not, instead limiting challenges to documents after they are recorded and, even then, requiring the Recorder to have a reasonable belief that a particular recorded document is fraudulent, coupled with the last record owner's request for administrative review.

52. The Recorder is well aware of this statutory limitation on her authority to reject documents submitted for recording.

53. As stated by the Recorder in a video accessible on her website entitled the "Review and Refer Law": Illinois has an "open recording system." As a result, "county recorders are required to record any document that meets legal standards. We are not authorized by law to verify the legal claims made in documents." <https://vimeo.com/91754595>

54. The reason for this is clear. A real property title system such as ours that is dependent on the public record cannot function effectively unless people can record "instruments relating to or affecting the title to real estate" without delay and "as soon as practicable after the receipt of any

instrument by the Recorder; otherwise, their interests will be in jeopardy until they can establish the legality of those instruments to the satisfaction of the Recorder or a court of law.

55. Although recorded documents may be challenged through the Fraud and Referral Review statute or a quiet title action, nothing in Illinois law requires proof of validity as a prerequisite to recording. To conclude otherwise would unduly delay and increase the cost of real estate transactions, as heirs will have to incur the costs and time involved in proving their interests in a court of law and title insurers will be unable to insure heirship interests and transactions unless and until they can be made part of the Public Record.

56. The constituent members of the ILTA, their customers (including, but not limited to heirs), and the public at large have a clear right to relief based on their statutory right to record Heirship Deeds, Heirship Affidavits, and other instruments relating to or affecting the title to real estate in this State without first proving by Heirship Order heirship or the entitlement of the parties to the subject instrument to engage in the subject transaction.

57. The Recorder has a clear statutory duty to record Heirship Deeds, Heirship Affidavits, and other instruments relating to or affecting the title to real estate in this State without first requiring the recording party to prove by Heirship Order heirship or the entitlement of the parties to the subject instrument to engage in the subject transaction.

58. The Recorder has the clear authority to comply with an order granting mandamus relief by recording Heirship Deeds, Heirship Affidavits, and other instruments relating to or affecting the title to real estate in this State without first requiring the recording party to prove by Heirship Order heirship or the entitlement of the parties to the subject instrument to engage in the subject transaction.

Wherefore, Plaintiff, Illinois Land Title Association, requests that this Court enter an

Order of Mandamus directing and requiring Defendant, Karen A. Yarbrough, not personally, but solely in her capacity as Cook County Recorder of Deeds, to record in the Public Record Heirship Deeds, Heirship Affidavits, and other instruments relating to or affecting the title to real estate in this State without first requiring the recording party to prove by Heirship Order heirship or the entitlement of the parties to the subject instrument to engage in the subject transaction, and grant such other and further relief as the Court deems just.

Plaintiff, Illinois Land Title Association,

BY: /s/ Ronald A. Damashek
One of its attorneys

Ronald A. Damashek
Stahl Cowen Crowley Addis, LLC
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Chicago, IL 60603
312/377-7858
Firm Id. : 38642
rdamashek@stahlcowen.com



KAREN A. YARBROUGH | COOK COUNTY RECORDER OF DEEDS

CEDRIC GILES

CHIEF DEPUTY RECORDER

CUSTOMER COURTESY NOTICE

AFFIDAVIT OF HEIRSHIP AND/OR SURVIVORSHIP NOTICE

The Cook County Recorder of Deeds (CCRD) is committed to ensuring Accuracy with all recordings. Due to that commitment, our office routinely reviews any and all Illinois, County and City laws, statutes & ordinances to ensure we are in compliance with such expectations. Recently, our office discovered that documents titled "Affidavit of Heirship" and/or "Affidavit of Survivorship" (and other similarly named docs) were being recorded by customers who had not first exhausted the Illinois Statutory & Circuit Court process. Accordingly, in an effort to assist any customer seeking to record any such documents moving forward we have compiled this notice which includes both the Illinois statute & the Cook County Circuit Court rule regarding documents with such titles. We would also like to provide all customers with notice that our offices will **NO LONGER** accept any document titled "Affidavit of Heirship" or "Affidavit of Survivorship" for recording unless it is a **CERTIFIED COPY** from the Circuit Court. As a reminder, our office does record General Affidavits and Affidavits (so long as they are explicitly enumerated in the Illinois Compiled Statutes, County or City Ordinance, or some other legislative empowering document).

Should you have any additional questions, comments or concerns, please consult the below Illinois and County statute/rule first, and then if still uncertain feel free to contact our Director of Public Information at 312.603.5050, or visit our website of www.cookrecorder.com.

§755 ILCS 5/5-3 (Illinois Law)

(755 ILCS 5/5-3) (from Ch. 110 1/2, par. 5-3)
 Sec. 5-3. Power to ascertain and declare heirship - evidence.) (a) The court may ascertain and declare the heirship of any decedent to be entered of record in the court at any time during the administration of the estate without further notice or, if there is no grant of administration, upon such notice and in such manner as the court directs.
 (b) The ascertainment of heirship may be made from (1) an affidavit of any person stating the facts from which the heirship of the decedent can be ascertained, which affidavit shall be signed and sworn to or affirmed before any notary public or judge of any court of record in the United States or any of its possessions or territories and certified by the clerk thereof, or before any United States consul, vice-consul, consular agent, secretary of legation or commissioned officer in active service of the United States, within or without the United States, or (2) from evidence either in narrative form or by questions and answers which are reduced to writing and certified by the court declaring the heirship. The seal of office of any notary public, United States consul, vice-consul, consular agent or secretary of legation and the designation of the name, rank and branch of service of any commissioned officer in active service of the armed forces of the United States shall be sufficient evidence of his identity and official character. The affidavit or transcript of evidence shall be filed by the clerk of the court declaring the heirship and remain as a part of the files in the cause.
 (c) An order of the court declaring heirship is prima facie evidence of the heirship, but any other legal method of proving heirship may be resorted to by any party interested therein in any place or court where the question may arise.
 (d) For purposes of this section the court may presume, in the absence of any evidence to the contrary, that the decedent and any person through whom heirship is traced was not the mother or father of any child born out of wedlock and, if the decedent or the person was a male, that no child born out of wedlock was filiated to or acknowledged or legitimated by the decedent or the person.
 (Source: P.A. 91-598.)

www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2104&ChapterID=60

12.2 COOK COUNTY CIRCUIT COURT RULE



STATE OF ILLINOIS
CIRCUIT COURT OF COOK COUNTY

Honorable Timothy C. Evans, Chief Judge

[ABOUT THE COURT](#) [FOR ATTORNEYS / LITIGANTS](#) [FOR JURORS](#)

MEDIA

12.2 Proof and Declaration of Heirship

(a) When a petition for admission of a will to probate or for letters of administration or an amended petition therefor, is filed, proof of heirship shall be made in accordance with Section 5-3 [755 ILCS 5/5-3] and a proposed order declaring heirship shall be submitted to the court.

(b) If no petition is filed for admission of a will to probate or for letters of administration, a person desiring to obtain a declaration of heirship shall file a petition stating:

- (i) The name and address of petitioner and petitioner's attorney;
- (ii) The name and place of residence of the decedent at the time of death;
- (iii) The time and place of death; and
- (iv) The names and post office addresses of decedent's heirs and whether any of them is a minor or disabled person.

(c) If no heir is named in a petition for admission of a will to probate or for letters of administration, or in an amended petition therefor, notice of the hearing on heirship shall be given to the State's Attorney.

[Amended August 8, 1996, effective September 3, 1996.]

www.cookcountycourt.org/ABOUTTHECOURT/CountyDep

EXHIBIT

tabbies

FILED DATE: 11/12/2018 11:03 AM 2018CH41451

Ronald A. Damashek

From: Ronald A. Damashek
Sent: Tuesday, May 01, 2018 11:47 AM
To: James Gleffe1 (Recorder of Deeds)
Subject: RE: problems recording affidavits of heirship and deeds from heirs

Mr. Gleffe: Do you have a moment to discuss the issue, the extent of the recording limitation, and the timing of the AG's opinion. If so, can you please give me a call. Thanks, Ron

Stahl Cowen

Ronald A. Damashek
Stahl Cowen Crowley Addis LLC
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From: James Gleffe1 (Recorder of Deeds) [<mailto:James.Gleffe@cookcountyil.gov>]
Sent: Tuesday, May 01, 2018 11:39 AM
To: Ronald A. Damashek
Subject: Re: problems recording affidavits of heirship and deeds from heirs

Hi Mr. Damashek,

I am writing you back in response to your inquiry regarding Affidavits of Heirship and Heirship Deeds. There has been a question raised as to whether these types of documents are documents that are entitled to be recorded under current law. As a result, our office is seeking a State's Attorney opinion on the matter. In the meantime, the Recorder of Deeds Office will not be recording any of these documents while our request is pending. I apologize for any inconvenience.

Regards,

James Gleffe
Chief Legal Counsel
Cook County Recorder of Deeds
118 North Clark Street, Room 230
Chicago, Illinois 60602
T: (312) 603-3096
M: (312) 405-4077
james.gleffe@cookcountyil.gov



FILED DATE: 11/13/2018 11:03 AM 2018CH14151

From: Ronald A. Damashek <RDamashek@stahlcowen.com>
Sent: Tuesday, May 1, 2018 11:11 AM
To: James Gleffe1 (Recorder of Deeds)
Subject: problems recording affidavits of heirship and deeds from heirs

Mr. Gleffe: As a follow-up to my telephone message, please give me a call regarding difficulties that First American Title Insurance Company has encountered in recording affidavits of heirship and deeds from heirs. Thank you. Ron

Stahl | Cowen

Ronald A. Damashek
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May 9, 2018

Cook County State's Attorney
c/o James Gleffe
Chief Legal Counsel
Cook County Recorder of Deeds
118 North Clark Street, Room 230
Chicago, Illinois 60602
james.gleffe@cookcountyil.gov

Re: Recorder's Refusal to Record Affidavits of Heirship and Heirship Deeds

Dear Mr. Gleffe:

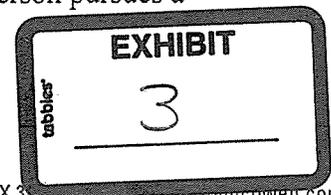
As a follow up to our recent communications, I understand that the Recorder is seeking a State's Attorney's opinion regarding the issue of whether Affidavits of Heirship and deeds that identify the grantor as the heir of a record owner are documents that are entitled to be recorded under current law. I also understand that the Recorder of Deeds Office will not be recording any of these documents while its request is pending.

This is a matter of grave concern to the public and the title insurance industry because transactions have been completed based on heirship documents that cannot be made part of the public record and because the Recorder's requirement to establish heirship through judicial proceedings prior to recording adds a costly and timely burden to the recording process.

As a result, to expedite the resolution of this issue, on behalf of First American Title Insurance Company and its insureds, I would request that you forward this response to the appropriate Assistant State's Attorney for consideration in formulating the opinion.

At the heart of this matter is the question of whether the Recorder has the authority to reject a document for recording because the party seeking to record it has not proven its authority to do so in a court of law. In this regard, the Recorder appears to be taking the position that, regardless of whether there is a will, an heir must establish his or her right to convey property through a judicial proceeding. See Recorder's Affidavit of Heirship and/or Survivorship Notice, citing 755 ILCS 5/5-3 and 12.2 Cook County Circuit Court Rule, a copy of which is attached hereto as Exhibit A.

However, section 5-3(a) of the Probate Act says that the court "may ascertain and declare the heirship", not that the court must declare heirship. (emphasis supplied). Similarly, Court Rule 12.2 does nothing more than describe the procedure to be followed if a person pursues a judicial determination of heirship.



Instead, the order of intestate passage of title to descendants is set forth in Section 2-1 of the Probate Act, which begins as follows: “Rules of descent and distribution. The intestate real and personal estate of a resident decedent and the intestate real estate in this State of a nonresident decedent, after all just claims against his estate are fully paid, descends and shall be distributed as follows.” 755 ILCS 5/2-1. Contrary to the position being taken by the Recorder, descendants are not required to obtain a judicial determination of their rights as an heir under this statutorily specified lineage.

As set forth in Section 5-3(c) of the Probate Act, a court proceeding is only one of the ways to prove heirship: “An order of the court declaring heirship is prima facie evidence of the heirship, but any other legal method of proving heirship may be resorted to by any party interested therein in any place or court where the question may arise.” (emphasis supplied). If the legislature had wanted to mandate that heirship had to be established in a court of law (for recording purposes or otherwise), it could have done so (rather than allowing for proof by any other legal method “in any place”). Absent such a requirement, the Recorder should not be allowed to require such an unnecessary expense as a prerequisite to recording instruments that refer to heirship.

As a matter of Illinois law, the Recorder is obligated to record documents related to property titles. In particular, as provided in 55 ILCS 5/3-5010:

Duties of recorder. Every recorder shall, as soon as practicable after the receipt of any instrument in writing in his office, entitled to be recorded, record the same at length in the order of time of its reception, in well bound books to be provided for that purpose.

Under Section 28 of the Conveyances Act, 765 ILCS 5/28, the documents entitled to be recorded, including:

Deeds, mortgages, powers of attorney, and other instruments relating to or affecting the title to real estate in this state, shall be recorded in the county in which such real estate is situated

Section 28 makes no distinction between a deed that identifies the grantor as an heir of the record owner and one that does not. In fact, the legislature specified a permissible form of deed in Section 9 of the Conveyances Act, 765 ILCS 5/9, and provided therein that “Every deed in substance in [that] form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to the grantee, his heirs or assigns...,” thus leaving no room for discretion by the Recorder concerning the recording of deeds that follow that form. Moreover, although Section 28 does not specifically refer to Affidavits of Heirship, such Affidavits clearly relate to or affect the title to real estate, and thus fall within this catchall provision of the Conveyances Act.

The legislature imposed a mandatory duty to record these documents on the Recorder to allow parties claiming interests in land to provide the public with constructive notice of their claims because, under the Conveyances Act, such notice takes effect only upon recording. As stated in 765 ILCS 5/30:

All deeds, mortgages and other instruments of writing which are authorized to be recorded, shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record.

As set forth in Staley Cont'l, Inc. v. Venterra Sales & Mgmt. Co., 228 Ill. App. 3d 174, 177, 592 N.E.2d 440, 442 (1st Dist. 1992):

It has been well-established in this state since 1845 that creditors can take steps under the law to secure the payment from debtors of indebtedness from both subsequent secured creditors and unsecured creditors. See Ill. Ann. Stat., ch. 30, par. 30, Historical Note, at 495 (Smith–Hurd 1969). Deeds, mortgages, powers of attorney, and other instruments relating to or affecting the title to real estate shall be recorded in the county in which such real estate is located, and shall take effect and be considered notice at the moment of filing as to all creditors and subsequent purchasers of a prior interest in the real estate. Ill. Rev. Stat. 1989, ch. 30, pars. 27, 29, 30.

As a result, the legislature did not give the Recorder the discretion to impose blanket requirements on the recording of documents affecting title to real estate based on the Recorder's determination of their legality or categorical concerns about fraud. Instead, the legislature established a process for recorders to follow when they have a concern about a particular document that "cause[s] the recorder to reasonably believe that the filing may be fraudulent, unlawfully altered, or intended to unlawfully cloud or transfer the title of any real property." 55 ILCS 5/3-5010.5. As set forth in 55 ILCS 5/3-5010.5(d) and (g), this procedure applies after the Recorder has recorded a document that she is statutorily required to record, by providing for an internal review and reference to an administrative law judge after notice to, and request from, the last owner of record of the document as follows:

(d) Determinations. If a recorder determines, after review by legal staff and counsel, that a deed or instrument that is recorded in the grantor's index or the grantee's index may be fraudulent, unlawfully altered, or intended to unlawfully cloud or transfer the title of any real property, he or she shall refer the deed or instrument to an administrative law judge for review pursuant to subsection (g) of this Section....

(g) Referral and review process. Prior to referral, the recorder shall notify the last owner of record of the document or documents suspected to be fraudulent. The person, entity, or legal representative thereof shall confirm in writing his or her belief that a document or documents are suspected to be fraudulent and may request that the recorder refer the case for review. Upon request, the recorder shall bring a case to its county department of administrative hearings and, within 10 business days after receipt, an administrative law judge shall schedule a hearing to occur no later than 30 days after receiving the referral....

Clearly, if the legislature had wanted to expand the Recorder's authority, it could have authorized the Recorder to determine the legality of certain recordings or to establish blanket prohibitions on the recording of categories of documents based on the mere possibility of fraud (rather than requiring the Recorder to have a reasonable belief that a particular recorded document was fraudulent, coupled with the last record owner's request for administrative review). However, the legislature granted the Recorder no such authority.

The Recorder admits the limitations on her authority to reject documents submitted for recording and to refer potentially fraudulent recordings for administrative review based on a consumer request in a video on her website video entitled the "Review and Refer Law." As acknowledged in the video, Illinois has an "open recording system." As a result, the Recorder recognizes that she is "not authorized by law to verify the legal claims made in documents." Rather, as set forth in the Conveyances Act, determinations are made on a case-by-case basis based on indicia of fraud and notice to the affected property owner.

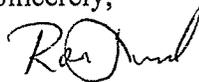
The reason for this is clear. A real property title system such as ours that is dependent on public record cannot function effectively unless people can record "instruments relating to or affecting the title to real estate" without delay; otherwise, their interests will be in jeopardy until they can establish the legality of those instruments to the satisfaction of the Recorder or a court of law.

Although recorded documents may be challenged through the Review and Refer Law or a quiet title action, nothing in Illinois law requires proof of validity as a prerequisite to recording. To conclude otherwise would unduly delay and increase the cost of real estate transactions, as title insurers will be unable to insure heirship transactions that cannot be made part of the public record.

Based on the foregoing, it is clear that deeds (whether they refer to heirship or not) and Heirship Affidavits are documents that are entitled to be recorded, and the Recorder should be so advised immediately so that the public can receive the benefits of our open recording system. Although my clients would prefer to work cooperatively with the Recorder to resolve this issue expeditiously, nothing in this response should be deemed to be a waiver of their right to seek judicial relief if the recording of heirship documents is not allowed in the very near future.

Please feel free to contact me should you have any questions or concerns in this regard.

Sincerely,



Ronald A. Damashek

cc: Kimberly M. Foxx, State's Attorney

June 21, 2018

Via Messenger

Alvin Portis
Assistant State's Attorney
Cook County State's Attorney's Office - Municipal Litigation Section
Richard J. Daley Center 50 West Washington Street, Room 500
Chicago, IL 60602-1356

Re: Recorder's Refusal to Record Affidavits of Heirship and Heirship Deeds

Dear Mr. Portis:

I am contacting you regarding a matter of some urgency. I attempted to reach you by telephone yesterday morning, but did not receive a return call. Therefore, I am taking the liberty of sending you this letter.

I am trying to connect with the Assistant State's Attorney (the "ASA") who is responsible for preparing an opinion for the Cook County Recorder of Deeds (the "Recorder") regarding the Recorder's Refusal to Record Affidavits of Heirship and Heirship Deeds. My understanding is that the opinion was requested over two months ago, but the opinion has not yet been issued even though this is a matter of significant public concern.

When I contacted the State's Attorney's Office yesterday, I was directed to you. However, since I have not heard back from you, I am unsure if you are the ASA assigned to this matter. Because neither the public nor my client can wait much longer for a resolution of this issue, I wanted to make sure that I connected with the assigned ASA as soon as possible. Therefore, I thought it best to send you this letter right away, with a copy to Ms. Foxx, to make sure that it reached the assigned ASA as soon as possible.

As described more fully in the enclosed documents, this urgent matter involves the Recorder's refusal to record Affidavits and Deeds executed by heirs without entry of a Court Order establishing heirship. Because the Recorder's actions are directly contrary to Illinois law and are interfering with the ability of heirs and others to perfect title through the recording process, I contacted the Recorder's Chief Legal Counsel, James Gleffe, to address the Recorder's misapprehension of the law and cause her to rescind this erroneous policy.

Mr. Gleffe advised me that he had submitted a request to the State's Attorney's Office to obtain a legal opinion on this issue, but refused to provide me with the name of the assigned ASA. However, Mr Gleffe did say that he would forward my May 9, 2018, letter detailing the legal flaws in the Recorder's policy to the assigned ASA.



When I did not receive a response from the assigned ASA or any indication that the State's Attorney's opinion was forthcoming, I followed up with Mr. Gleffe by email, once again raising the significant adverse impact of the Recorder's action and seeking contact with the assigned attorney. After a lengthy delay, Mr. Gleffe ultimately advised me yesterday that he would not provide me with the assigned ASA's contact information and requested that I not attempt to contact that attorney. For your reference, I enclose a copy of my May 9th letter and email correspondence with Mr. Gleffe.

Mr. Gleffe's request simply is not acceptable to my client, its insureds or the public at large. First, heirs improperly have been denied the ability to record their property interests in the public record for months, and those interests are in jeopardy. Second, this problem exacerbates each day that we are put off by the Recorder, as transaction after transaction cannot be recorded in the public record. Third, having not spoken with a representative of the State's Attorney's Office, I am not sure which, if any, of my communications, have been provided to your Office so that the State's Attorney can make the most informed and expeditious decision possible.

For instance, in Mr. Gleffe's May 11th email, he told me that he had provided my May 9th letter to you; however, in yesterday's email, Mr. Gleffe said he "will" provide my letter to you. Although I hope that Mr. Gleffe inadvertently was referring to my May 29th email further detailing the problem and complaining about the lack of a timely response, rather than to my May 9th letter, even the three week delay in sharing my May 29th email with the assigned ASA is inexplicable, especially given the severity of the problem created by the Recorder and Mr. Gleffe's refusal to provide me with the assigned ASA's contact information so that I can make sure that the State's Attorney's Office is fully educated on this vitally important issue, and addresses it with alacrity.

I read a very favorable review of Ms. Foxx's performance in the Chicago Tribune recently. Unfortunately, in the absence of any communications from the State's Attorney's Office in response to my May 9, 2018, letter or the issuance of an opinion based on the undisputed law set forth in that letter, I am disappointed to say that I am not confident that this matter has been treated in the same manner. I hope I am incorrect and, in any case, request the courtesy of a prompt response from the assigned ASA and, even more importantly the prompt termination of the Recorder's improper practices. Thank you in advance for your consideration.

Sincerely,



Ronald A. Damashek

cc: Kim Foxx, State's Attorney via messenger

encl.

May 9, 2018

Cook County State's Attorney
c/o James Gleffe
Chief Legal Counsel
Cook County Recorder of Deeds
118 North Clark Street, Room 230
Chicago, Illinois 60602
james.gleffe@cookcountyil.gov

Re: Recorder's Refusal to Record Affidavits of Heirship and Heirship Deeds

Dear Mr. Gleffe:

As a follow up to our recent communications, I understand that the Recorder is seeking a State's Attorney's opinion regarding the issue of whether Affidavits of Heirship and deeds that identify the grantor as the heir of a record owner are documents that are entitled to be recorded under current law. I also understand that the Recorder of Deeds Office will not be recording any of these documents while its request is pending.

This is a matter of grave concern to the public and the title insurance industry because transactions have been completed based on heirship documents that cannot be made part of the public record and because the Recorder's requirement to establish heirship through judicial proceedings prior to recording adds a costly and timely burden to the recording process.

As a result, to expedite the resolution of this issue, on behalf of First American Title Insurance Company and its insureds, I would request that you forward this response to the appropriate Assistant State's Attorney for consideration in formulating the opinion.

At the heart of this matter is the question of whether the Recorder has the authority to reject a document for recording because the party seeking to record it has not proven its authority to do so in a court of law. In this regard, the Recorder appears to be taking the position that, regardless of whether there is a will, an heir must establish his or her right to convey property through a judicial proceeding. See Recorder's Affidavit of Heirship and/or Survivorship Notice, citing 755 ILCS 5/5-3 and 12.2 Cook County Circuit Court Rule, a copy of which is attached hereto as Exhibit A.

However, section 5-3(a) of the Probate Act says that the court "may ascertain and declare the heirship", not that the court must declare heirship. (emphasis supplied). Similarly, Court Rule 12.2 does nothing more than describe the procedure to be followed if a person pursues a judicial determination of heirship.

Instead, the order of intestate passage of title to descendants is set forth in Section 2-1 of the Probate Act, which begins as follows: "Rules of descent and distribution. The intestate real and personal estate of a resident decedent and the intestate real estate in this State of a nonresident decedent, after all just claims against his estate are fully paid, descends and shall be distributed as follows:" 755 ILCS 5/2-1. Contrary to the position being taken by the Recorder, descendants are not required to obtain a judicial determination of their rights as an heir under this statutorily specified lineage.

As set forth in Section 5-3(c) of the Probate Act, a court proceeding is only one of the ways to prove heirship: "An order of the court declaring heirship is prima facie evidence of the heirship, but any other legal method of proving heirship may be resorted to by any party interested therein in any place or court where the question may arise." (emphasis supplied). If the legislature had wanted to mandate that heirship had to be established in a court of law (for recording purposes or otherwise), it could have done so (rather than allowing for proof by any other legal method "in any place"). Absent such a requirement, the Recorder should not be allowed to require such an unnecessary expense as a prerequisite to recording instruments that refer to heirship.

As a matter of Illinois law, the Recorder is obligated to record documents related to property titles. In particular, as provided in 55 ILCS 5/3-5010:

Duties of recorder. Every recorder shall, as soon as practicable after the receipt of any instrument in writing in his office, entitled to be recorded, record the same at length in the order of time of its reception, in well bound books to be provided for that purpose.

Under Section 28 of the Conveyances Act, 765 ILCS 5/28, the documents entitled to be recorded, including:

Deeds, mortgages, powers of attorney, and other instruments relating to or affecting the title to real estate in this state, shall be recorded in the county in which such real estate is situated

Section 28 makes no distinction between a deed that identifies the grantor as an heir of the record owner and one that does not. In fact, the legislature specified a permissible form of deed in Section 9 of the Conveyances Act, 765 ILCS 5/9, and provided therein that "Every deed in substance in [that] form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to the grantee, his heirs or assigns..." thus leaving no room for discretion by the Recorder concerning the recording of deeds that follow that form. Moreover, although Section 28 does not specifically refer to Affidavits of Heirship, such Affidavits clearly relate to or affect the title to real estate, and thus fall within this catchall provision of the Conveyances Act.

The legislature imposed a mandatory duty to record these documents on the Recorder to allow parties claiming interests in land to provide the public with constructive notice of their claims because, under the Conveyances Act, such notice takes effect only upon recording. As stated in 765 ILCS 5/30:

All deeds, mortgages and other instruments of writing which are authorized to be recorded, shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record.

As set forth in Staley Cont'l, Inc. v. Venterra Sales & Mgmt. Co., 228 Ill. App. 3d 174, 177, 592 N.E.2d 440, 442 (1st Dist. 1992):

It has been well-established in this state since 1845 that creditors can take steps under the law to secure the payment from debtors of indebtedness from both subsequent secured creditors and unsecured creditors. See Ill. Ann. Stat., ch. 30, par. 30, Historical Note, at 495 (Smith-Hurd 1969). Deeds, mortgages, powers of attorney, and other instruments relating to or affecting the title to real estate shall be recorded in the county in which such real estate is located, and shall take effect and be considered notice at the moment of filing as to all creditors and subsequent purchasers of a prior interest in the real estate. Ill. Rev. Stat. 1989, ch. 30, pars. 27, 29, 30.

As a result, the legislature did not give the Recorder the discretion to impose blanket requirements on the recording of documents affecting title to real estate based on the Recorder's determination of their legality or categorical concerns about fraud. Instead, the legislature established a process for recorders to follow when they have a concern about a particular document that "cause[s] the recorder to reasonably believe that the filing may be fraudulent, unlawfully altered, or intended to unlawfully cloud or transfer the title of any real property." 55 ILCS 5/3-5010.5. As set forth in 55 ILCS 5/3-5010.5(d) and (g), this procedure applies after the Recorder has recorded a document that she is statutorily required to record, by providing for an internal review and reference to an administrative law judge after notice to, and request from, the last owner of record of the document as follows:

(d) Determinations. If a recorder determines, after review by legal staff and counsel, that a deed or instrument that is recorded in the grantor's index or the grantee's index may be fraudulent, unlawfully altered, or intended to unlawfully cloud or transfer the title of any real property, he or she shall refer the deed or instrument to an administrative law judge for review pursuant to subsection (g) of this Section....

(g) Referral and review process. Prior to referral, the recorder shall notify the last owner of record of the document or documents suspected to be fraudulent. The person, entity, or legal representative thereof shall confirm in writing his or her belief that a document or documents are suspected to be fraudulent and may request that the recorder refer the case for review. Upon request, the recorder shall bring a case to its county department of administrative hearings and, within 10 business days after receipt, an administrative law judge shall schedule a hearing to occur no later than 30 days after receiving the referral....

Clearly, if the legislature had wanted to expand the Recorder's authority, it could have authorized the Recorder to determine the legality of certain recordings or to establish blanket prohibitions on the recording of categories of documents based on the mere possibility of fraud (rather than requiring the Recorder to have a reasonable belief that a particular recorded document was fraudulent, coupled with the last record owner's request for administrative review). However, the legislature granted the Recorder no such authority.

The Recorder admits the limitations on her authority to reject documents submitted for recording and to refer potentially fraudulent recordings for administrative review based on a consumer request in a video on her website video entitled the "Review and Refer Law." As acknowledged in the video, Illinois has an "open recording system." As a result, the Recorder recognizes that she is "not authorized by law to verify the legal claims made in documents." Rather, as set forth in the Conveyances Act, determinations are made on a case-by-case basis based on indicia of fraud and notice to the affected property owner.

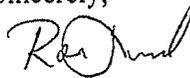
The reason for this is clear. A real property title system such as ours that is dependent on public record cannot function effectively unless people can record "instruments relating to or affecting the title to real estate" without delay; otherwise, their interests will be in jeopardy until they can establish the legality of those instruments to the satisfaction of the Recorder or a court of law.

Although recorded documents may be challenged through the Review and Refer Law or a quiet title action, nothing in Illinois law requires proof of validity as a prerequisite to recording. To conclude otherwise would unduly delay and increase the cost of real estate transactions, as title insurers will be unable to insure heirship transactions that cannot be made part of the public record.

Based on the foregoing, it is clear that deeds (whether they refer to heirship or not) and Heirship Affidavits are documents that are entitled to be recorded, and the Recorder should be so advised immediately so that the public can receive the benefits of our open recording system. Although my clients would prefer to work cooperatively with the Recorder to resolve this issue expeditiously, nothing in this response should be deemed to be a waiver of their right to seek judicial relief if the recording of heirship documents is not allowed in the very near future.

Please feel free to contact me should you have any questions or concerns in this regard.

Sincerely,



Ronald A. Damashek

cc: Kimberly M. Foxx, State's Attorney

Regards,

Jim Gleffe

Sent from my iPhone

On Jun 15, 2018, at 2:01 PM, Ronald A. Damashek <RDamashek@stahlcowen.com> wrote:

Jim: I did not receive a response to the email below, which I sent to you over two weeks ago on Tuesday, May 29, 2018. Based on your prior communication, I assume that means that you still have not received the opinion from the State's Attorney's Office. Unfortunately, as indicated below, the Recorder's position has significant adverse consequences that need to be addressed without further delay. Therefore, I would ask that you provide me with the name and contact information of the assistant state's attorney who is handling this matter by the close of business next Tuesday, June 19, 2018, so that I may contact that person directly to expedite the resolution of this dispute. If I do not hear from you by then, I will reach out to the State's Attorney directly to address the situation. Thank you in advance for your cooperation. Ron

Stahl|Cowen

Ronald A. Damashek
Stahl Cowen Crowley Addis LLC
55 W. Monroe, Suite 1200
Chicago, IL 60603
312-377-7858
312-423-8160 fax
rdamashek@stahlcowen.com

www.stahlcowen.com

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From: Ronald A. Damashek
Sent: Tuesday, May 29, 2018 12:55 PM
To: 'James Gleffe (Recorder of Deeds)'
Cc: statesattorney@cookcountyil.gov
Subject: RE: Cook County Recorder's refusal to recording affidavits of heirship and deeds from heirs

Jim: I am writing to follow up on the detailed letter that I submitted to the State's Attorney (by email to you) objecting to the practice of the Cook County Recorder of Deeds of rejecting heirship-related recordings. I recognize that the Recorder does not intend to act until you hear back from the State's Attorney; however, more than two weeks have passed since I submitted the objection on behalf of First American Title Insurance Company, which I understand was well after you initially submitted the Recorder's request for an opinion to the State's Attorney's office.

Although I recognize that this is but one of the issues that the State's Attorney is called upon to address, it is a matter of critical importance because the Recorder's refusal to record documents is undermining the chain of title and interfering with the rights of widows and other heirs. In

fact, I recently learned of the rejection of a deed submitted for recording simply because it contained the word "widow." In support, the Recorder's office cited the fraudulent referral statute, 55 ILCS 5/3-5010.5. Yet, as indicated in my letter to the State's Attorney, that referral process starts only after a document is recorded and requires a request for action from the affected parties, not a blanket ban on recording heirship documents.

As such, the situation is getting worse not better. Consumers trying to record conveyancing documents are being prevented from doing so without first litigating the issue of heirship. Such litigation is an unnecessary expense, as not only is there nothing inherently fraudulent about these conveyances, but title insurance companies can protect consumers by insuring the transactions if only the Recorder allows them to be placed in the public record. Until then, deeds and other conveyancing documents involving heirs will continue to pile up, leaving countless holes in a public record that is supposed to provide all concerned with an accurate, readily determinable, ownership record.

Accordingly, I would ask that the Recorder's Office reconsider its position and/or forward this communication to the Assistant State's Attorney who is preparing the opinion requested by the Recorder, together with a request to expedite that opinion so that the ownership rights of heirs and the public's reliance on the completeness of the public record can be protected.

Thank you, Ron

Stahl | Cowen

Ronald A. Damashek
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312-423-8160 fax
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From: James Gleffe (Recorder of Deeds) [<mailto:James.Gleffe@cookcountyil.gov>]

Sent: Friday, May 11, 2018 11:08 AM

To: Ronald A. Damashek

Subject: Re: Cook County Recorder's refusal to recording affidavits of heirship and deeds from heirs

Mr. Damashek,

I have forwarded your submission to the State's Attorney working on the advice letter. As I have noted with others that have raised this issue with me, I will follow up with you after our office receives the advice letter from the State's Attorney's Office.

Regards,

Jim

James Gleffe
Chief Legal Counsel
Cook County Recorder of Deeds
118 North Clark Street, Room 230
Chicago, Illinois 60602
T: (312) 603-3096
M: (312) 405-4077
james.gleffe@cookcountyil.gov

From: Ronald A. Damashek <RDamashek@stahlcowen.com>
Sent: Wednesday, May 9, 2018 4:18 PM
To: James Gleffe (Recorder of Deeds)
Cc: StatesAttorney
Subject: Cook County Recorder's refusal to recording affidavits of heirship and deeds from heirs

Mr. Gleffe: As a follow-up to our email exchange below, you and I have traded phone messages, but have not connected. As a result, I thought it would be expedient to send you the attached letter related to the refusal of the Cook County Recorder of Deeds to record affidavits of heirship and deeds referring to heirship pending issuance of an opinion requested by the Recorder from the State's Attorney.

The freeze on recordings is adversely impacting the public and the title insurance industry, and needs to be resolved as quickly as possible. Because my client is very knowledgeable in this area, I thought that the decision making process would be enhanced and expedited if the State's Attorney had the benefit of its input.

Although I would be happy to communicate directly with the Assistant State's Attorney who is handling the Recorder's request, my understanding is that the Recorder does not want people outside of her office to do so. Therefore, I would ask that you forward the attached letter to the Assistant State's Attorney, and ask the Assistant to consider our position and render an expedited opinion in regard to this important issue.

Please let me know if you are willing to do this and, if so, please let me know when the letter is forwarded to the Assistant State's Attorney. Of course, if you are willing to provide me with the contact of the Assistant State's Attorney, or if the Assistant wants to contact me once you forward my letter, I would be happy to communicate directly with the Assistant State's Attorney.

Thank you in advance for your cooperation. Ron

Stahl|Cowen

Ronald A. Damashek
Stahl Cowen Crowley Addis LLC

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From: James Gleffe1 (Recorder of Deeds) [<mailto:James.Gleffe@cookcountyil.gov>]
Sent: Tuesday, May 01, 2018 11:39 AM
To: Ronald A. Damashek
Subject: Re: problems recording affidavits of heirship and deeds from heirs

Hi Mr. Damashek,

I am writing you back in response to your inquiry regarding Affidavits of Heirship and Heirship Deeds. There has been a question raised as to whether these types of documents are documents that are entitled to be recorded under current law. As a result, our office is seeking a State's Attorney opinion on the matter. In the meantime, the Recorder of Deeds Office will not be recording any of these documents while our request is pending. I apologize for any convenience.

Regards,

James Gleffe
Chief Legal Counsel
Cook County Recorder of Deeds
118 North Clark Street, Room 230
Chicago, Illinois 60602
T: (312) 603-3096
M: (312) 405-4077
james.gleffe@cookcountyil.gov

From: Ronald A. Damashek <RDamashek@stahlcowen.com>
Sent: Tuesday, May 1, 2018 11:11 AM
To: James Gleffe1 (Recorder of Deeds)
Subject: problems recording affidavits of heirship and deeds from heirs

Mr. Gleffe: As a follow-up to my telephone message, please give me a call regarding difficulties that First American Title Insurance Company has encountered in recording affidavits of heirship and deeds from heirs. Thank you. Ron

Ronald A. Damashek

From: Ronald A. Damashek
Sent: Wednesday, June 20, 2018 9:32 AM
To: 'James Gleffe (Recorder of Deeds)'
Cc: StatesAttorney
Subject: RE: Cook County Recorder's refusal to recording affidavits of heirship and deeds from heirs

Mr. Gleffe: Apparently, you misunderstand my desire to speak to the State's Attorney. It has nothing to do with attorney-client communications. Instead, I want to determine why it has taken more than two months for the State's Attorney to provide an opinion on a very simple issue that is having a significant impact on County residents. While I respect the Recorder's intent to reduce instances of fraud in the recording process, her targeting of heirs is like trying to kill a fly with a sledge hammer, totally misguided and totally unsupported by law. Although the Recorder might be willing to let this situation drag on for months, my client has no intention of so doing. As a result, I will be contacting the State's Attorney, including Ms. Foxx if necessary, to determine if the State's Attorney needs any additional information from me to render its opinion and to expedite that opinion for the public good. Ron

Stahl|Cowen

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From: James Gleffe (Recorder of Deeds) [<mailto:James.Gleffe@cookcountyil.gov>]
Sent: Wednesday, June 20, 2018 8:17 AM
To: Ronald A. Damashek
Cc: StatesAttorney
Subject: Re: Cook County Recorder's refusal to recording affidavits of heirship and deeds from heirs

Mr. Damashek,

With all due respect, when we are seeking a legal opinion from the State's Attorney's Office, we are requesting legal advice. As a result, they would not be able to discuss this attorney/client privileged matter with you.

I will forward your letter to them for their review, but at this time, I would ask that you refrain from contacting our attorneys at the State's Attorney's Office while they are in the process of providing independent legal advice to our office.

Stahl|Cowen

Ronald A.Damashek
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Ronald A. Damashek

From: ALVIN PORTIS JR. (States Attorney) <alvin.portisjr@cookcountyl.gov>
Sent: Thursday, September 13, 2018 4:45 PM
To: Ronald A. Damashek
Subject: Re: Recorder of Deeds

Ron:

Pursuant to our conversation, this email confirms that the Recorder is in the process of implementing the following procedures as it relates to the recording of document with probate related issues.

1. **Deeds** – The Recorder has reconsidered its position and will accept deeds from heirs and will agree to record them going forward. I believe some title companies may refer to these deeds as “heirship deeds.” Regardless of the title, deeds will be recorded.

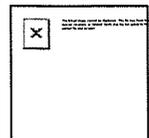
2. **Affidavits of Heirship.** – While the need for affidavits of heirship may be moot for some title companies, to the extent that an affidavit of heirship document is sought to be recorded, The Recorder will accept this document so long as some disclaimer is noted on the affidavit making clear that there has not been a judicial determination regarding the affidavit. The Recorder is requesting that the title companies develop the exact language for the disclaimer.

3. **Affidavits of Intestate Distribution (Alternative)** – In the event title companies do not wish to submit affidavits of heirship with a disclaimer, per previous discussions the Recorder will accept “Affidavits of Intestate Distribution” that would not require disclaimer language.

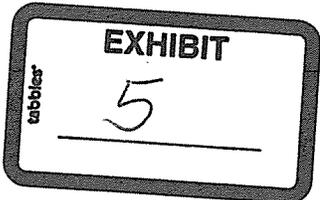
The Recorder is already making the necessary changes to implement the new procedures. Although I do not have the exact time frame, I should have an update by the end of next week.

Sincerely,

Alvin



Alvin Portis
Assistant State’s Attorney
Civil Actions Bureau – Municipal Litigation
Cook County State's Attorney's Office



FILED DATE: 11/13/2018 11:03 AM 2018CH14151

500 Richard J. Daley Center
Chicago, IL 60602
P: 312.603.5339 E: alvin.portisjr@cookcountyil.gov

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Ronald A. Damashek

From: ALVIN PORTIS JR. (States Attorney) <alvin.portisjr@cookcountyl.gov>
Sent: Monday, September 24, 2018 1:58 PM
To: Ronald A. Damashek
Subject: Re: Recorder of Deeds

Ron: please see below in regards to the issues of recording documents we have been discussing:

- Deeds (sometimes referred to as “Heirship Deeds”) – These deeds will be accepted effective immediately. If a customer has an issue relating to one of these deeds, please have them speak with Wendy Holderman at (312) 603-5315 or at wendy.holderman@cookcountyl.gov.
- Affidavits of Heirship and Affidavits of Intestate Distribution – The Recorder would like a final internal review as it relates to issues involving these documents. The Recorder will complete this review within the next week.

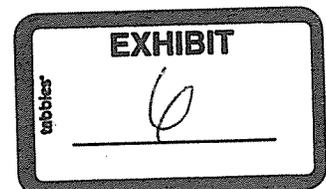
Alvin



Alvin Portis

Assistant State’s Attorney
Civil Actions Bureau – Municipal Litigation
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, IL 60602
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Howard Samson

From: Mario Reed (Recorder of Deeds) <Mario.Reed@cookcountyil.gov>
Sent: Monday, November 05, 2018 9:12 AM
To: Howard Samson
Cc: Wendy Holderman (Recorder of Deeds)
Subject: Sorry for the confusion, but nothing has changed

Dear Mr. Samson,

Greatest of mornings to you, I do hope you're enjoying your Monday thus far. Many apologies for any confusion which may be swirling around out there, as this most recent time, some of the confusion came from our office--so I apologize for that information. Nonetheless, I am very pleased and excited to report that the Honorable Karen A. Yarbrough herself has reaffirmed the office's previous position of NOT ACCEPTING Heirship Deeds or Affidavits of Heirship UNLESS they are accompanied by a Certified Order Declaring Heirship. Accordingly, the same legal requirements as previously discussed and established are "still in play" and are office will continue to assist with educating any and all on that expedited and inexpensive process whenever sought. Thanks for the correspondence, and please enjoy the rest of your day and week!

Best,

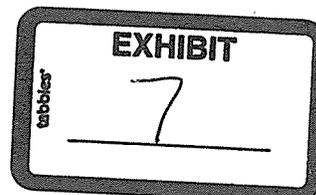
Mario A. Reed, Esq.

Director of Public Information | Cook County Recorder of Deeds Office

118 N. Clark Street, Room 120, Chicago, Illinois 60602

(office) 312.603.5936 | (cellular) 708.808.0814 | (fax) 312.603.3217

(email) Mario.reed@CookcountyIL.gov



Ronald A. Damashek

From: James Gleffe (Recorder of Deeds) <James.Gleffe@cookcountyil.gov>
Sent: Monday, November 05, 2018 3:01 PM
To: Ronald A. Damashek
Cc: ALVIN PORTIS JR. (States Attorney); Mario Reed (Recorder of Deeds)
Subject: Re: Recorder of Deeds heirship issues

Mr. Damashek:

I understand there has been ongoing confusion regarding this issue, and I am writing to make clear the position of the Recorder's Office.

Mr. Reed's email is accurate - the Recorder's Office is not going to record heirship deeds or affidavits of heirship unless they are accompanied by an order declaring heirship. This procedure is currently in effect.

I apologize for the misunderstanding/miscommunication.

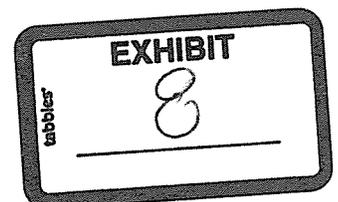
Regards,

Jim

James Gleffe
Chief Legal Counsel
Cook County Recorder of Deeds
118 North Clark Street, Room 230
Chicago, Illinois 60602
T: (312) 603-3096
M: (312) 405-4077
james.gleffe@cookcountyil.gov

From: Ronald A. Damashek <RDamashek@stahlcowen.com>
Sent: Monday, November 5, 2018 1:53 PM
To: James Gleffe (Recorder of Deeds)
Cc: ALVIN PORTIS JR. (States Attorney); Mario Reed (Recorder of Deeds)
Subject: FW: Recorder of Deeds heirship issues

Mr. Gleffe: As you know, you and I have had a history of communications regarding the Cook County Recorder of Deeds refusal to record heirship deeds and affidavits absent a certified copy of a court order declaring heirship. In the past, you have referred my inquiries to Alvin Portis in the State's Attorney's office, which ultimately led to a reversal of the Recorder's position, at least with respect to the recording of heirship deeds. Although I initially understood that the affidavit issue had been resolved as well, the Recorder decided to take that issue under further advisement.



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Today, I received a copy of the attached email from Mario Reed indicating that the Recorder is not going to record heirship deeds or affidavits unless they are accompanied by a certified court order declaring heirship. I immediately reached out to Mr. Portis, but Mr. Portis advised me that he did not have any authority to talk to me on the subject and that I should direct any inquiries to you or Mr. Reed.

As you know, the Recorder's procedure impacts members of the public who want to transfer heirship property and their mortgagees and title insurers. Therefore, please advise me today if:

1. Mr. Reed's email is an accurate statement of the Recorder's current position.
2. Is the Recorder's Office implementing this procedure immediately.
3. If not, when will this procedure be implemented.

Thank you, Ron

Stahl | Cowen

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