



Issues to Implementing Blockchain for Real Estate

The Illinois Land Title Association supports several state legislative recommendations made by the Illinois Blockchain and Distributed Ledger Task Force, including consideration of the Uniform Electronic Transactions Act and modernization of notary-related statutes. Blockchain may also be useful in addressing the security of increased e-filings with governmental entities. However, proposals to use Blockchain in real estate transactions require a cautious approach.

As blockchain discussions continue and distributed ledgers are regulated under state law, it is important to recognize the uncertainty that will still exist as to the validity of recorded deeds, the impact of non-record matters, and the determination of whether items posted in the public record by an individual's name affect a specific parcel of land.

Any distributed ledger tracking system must initially account for Illinois statute and case law recognizing that Illinois is a race-notice state pursuant to 765 ILCS 5/30 that relies on a grantor-grantee index as the foundation for constructive notice regarding the status of title, see 55 ILCS 5/3-5025; *Skidmore, Owings & Merrill v. Pathway Financial*, 173 Ill.App.3d 512, 514, 123 Ill. Dec. 395, 527 N.E.2d 1033 (1988).

Beyond this foundational consideration, at the time blockchain is implemented, the distributed ledger will not in and of itself be determinative of the owner of title or of the liens, easements, covenants, or restrictions affecting property prior to blockchain implementation. Additionally, not everything that can impact property rights will be in a public record or will be posted against a defined parcel of real estate once blockchain is implemented; below is a non-exhaustive list:

- Actual knowledge that an individual's property rights will prevail over an adverse deed;
- Actual possession of property puts parties on constructive notice of the possessor's rights;
- Adverse possession of property can occur with or without color of title;
- State and federal liens and a memorandum of judgment against a named individual or entity and not a specific parcel of land, leaving uncertainty as to what parcels they do or do not affect;
- State tax liens and Medicaid liens that now have a separate index not kept by the recorder;
- Parties listed on the Office of Foreign Assets Control website are also posted by name and are not subject to state statutes;
- Mechanics liens attach to land with the construction contract but may not be recorded until four months after the date of work completion;
- Court judgments and judicial or sheriff's deeds, including deeds issued in mortgage foreclosures, may be set aside years later because of defective service on a constitutional due process basis;
- Bankruptcies are notice in the county that the court is located by the mere filing in a U.S. Bankruptcy Court;

Even if in the public record, not all recorded documents are valid as a result of fraud in the inducement, undue influence, or lack of authority in the party signing the document. Because blockchain is not "fraud-proof," these issues will need further consideration.

Consideration is also needed for financial institutions, which require standardized loan policies with defined endorsements from underwriters to insure issues from zoning to encroachments. These financial requirements are for both the initial loan and the sale of mortgages or mortgage-backed securities in the secondary market, and the underwriters involved are subject to state regulation with statutory reserves, published financials, and credit ratings.

Ultimately, any transition into a distributed ledger system may be more easily accomplished in other areas of commerce with less complexity than a real estate transaction.