

# community BANKER

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Welcome to the latest issue of the COMMUNITY BANKER.

The Community Banker is prepared by attorneys at Olson & Burns P.C. to provide information pertaining to legal developments affecting the field of banking. In order to accomplish this objective, we welcome any comments our readers have regarding the content and format of this publication. Please address your comments to:

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The attorneys at Olson & Burns represent a wide range of clients in the financial and commercial areas. Our attorneys represent more than 30 banks throughout North Dakota.

## You Are Asking . . .

**Q:** Where do we file if we want to take a security interest in the movies made by a small, independent local company? Some of the movies are copyrighted and some are not.

**A:** The answer to this question has several layers. First, if a movie is on a piece of film, the company already *has* a copyright on the movie. It is common to confuse copyright registration with a copyright. In the United States, copyright is automatic on "fixation" – it applies as soon as the work is fixed in some "tangible medium of expression" – here the movie on film. Copyright registration is not required to receive copyright protection. Creators record or register their copyrights because they can't sue for copyright infringement without having registering the copyright. An unregistered copyright is still copyrighted material; it just isn't filed in the Copyright Office.



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The Copyright Act provides in relevant part that “Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the US Copyright Office.” 17 U.S.C. § 205(a). “Transfer” is defined to include “mortgage” or “hypothecation.” 17 U.S.C. § 101. The Copyright Act implicitly preempts Article 9 because it defines a “transfer” to include a security interest in copyrights.

So, getting to the point, perfection on a *registered* copyright is done only through federal filing at Copyright Office: Library of Congress, U.S. Copyright Office, 101 Independence Avenue SE, Washington, DC 20559. The Copyright Office website has information on how to file, and you can also do this online. You may also file a UCC-1 in the state office just to let everyone know *you* have a security interest in the movies, but filing the UCC-1 is not necessary and won’t perfect your security interest in a recorded or registered copyright.

Unregistered copyrights, on the other hand, are not subject to the Copyright Act, so Article 9 applies. Perfection must be obtained by filing a state UCC-1 financing statement to perfect a security interest in unregistered copyrights. (That would mean referring to “all films not registered or recorded at the U.S. Copyright Office.”) In sum, file at the Copyright Office to perfect a security interest in registered copyrights and with the state for unregistered copyrights.

To release the security interest in the registered or recorded copyright, file a release with the United States Copyright Office.

**Q: Mr. Turner has a Revocable Living Trust and he is the Trustee; his son, Tom, is named as successor trustee. Tom has had cancer, and though he is in remission and is doing well, Mr. Turner has named Tom’s wife Tina as successor trustee if Tom is unable to serve. In the event Tina is unable to serve, Mr. Turner has named Teri, the daughter of Tom and Tina. In the event Teri is unable to serve, Mr. Turner has named Tom and Tina’s eldest son, Ted.**

**So, Mr. Turner is trustee, and then it’s Tom, Tina, Teri, and Ted. Mr. Turner sent us an amendment to his Revocable Trust naming each of these successor trustees; he wants us to list each of the four successor trustees on the account agreement and have them sign the signature card as “successor trustee.” My reading of the amendment is that Tom is the only successor trustee. It’s not until he is *unable* to serve that we would change the signature card to reflect the next successor trustee. Is this correct or do we list all four successor trustees now?**

**A:** First, you are correct that son Tom is the successor trustee and will be replaced by the next in line when and if he is unable to serve.

Second, a successor trustee doesn’t, can’t, and shouldn’t sign the signature cards until he or she *becomes trustee*. Right now, Tom, Tina, Teri, and Ted can’t exercise any authority over the trust funds. If Mr. Turner, the grantor, wants one of these four to sign a signature card now, another amendment must be drafted naming one of these people as a co-trustee to the grantor. Successor trustees have no authority under the trust documents and you can’t just give this crowd signing authority. As always, if you are not sure who has the authority to sign on a trust account, ask your bank counsel to review the trust documents.



**Q: Our bank is in an area where there are a lot of military personnel. We understand that military ID cards are good documents for verification under the CIP rules; however, we have also heard that we should not copy military IDs. Is this correct? How do we handle this for our records?**

**A:** A military ID is government issued and has a photograph of the person to whom it's issued, so it meets the requirements of the "verification through documents" method of proving identity under 31 C.F.R. § 103.121. However, you are correct about making a copy for your files. Federal law prohibits your copying a military ID. See 18 U.S.C. § 701. The easiest way to handle this is by requiring an additional form of ID, such as the person's driver's license. You can copy that for your files.

Someone should review the bank's CIP procedure approved by the board. If the procedure requires that you copy the IDs, make sure you have an exception for military ID cards so someone doesn't accidentally violate federal law.

**Q: Our bank had an attempted robbery - the guy got spooked and ran out. We are very thankful no one was hurt. My question is, because no money was taken, do we need to file a SAR?**

**A:** No, but not because he didn't get any money. You aren't required to file a SAR even if he got away with every cent on the premises. A SAR is not required for a robbery or burglary either committed or *attempted* so long that is reported to the appropriate law enforcement officials:

(c) *Exceptions.* A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

31 C.F.R. § 103.18(c).

**Q: Mom wants to cash in the savings bond owned by her six-year-old daughter. What sort of information do we need to include on the back of the bond if the parent or guardian is cashing it in?**

**A:** The U.S. Department of the Treasury has a super-duper publication, and all of your savings bond questions can be answered in the *Savings Bond Resource Guide* found at the Treasury Direct website:

[https://www.treasurydirect.gov/instit/savbond/guide/guide\\_sbr.htm](https://www.treasurydirect.gov/instit/savbond/guide/guide_sbr.htm)

Appendix D to this document is *The Guide to Cashing Savings Bonds*. Your financial institution may, but isn't required to, cash bonds presented by a parent of a minor, a beneficiary, or, in certain circumstances, a legal representative such as a trustee, guardian, executor, or other fiduciary representative. If you choose to *not* cash these bonds, you may refer the customer to the Treasury Retail Securities Site at FRB Minneapolis or you may forward the transaction to Minneapolis on behalf of the customer.

If your bank is willing to cash the bond, *The Guide to Cashing Savings Bonds* describes the procedure if the minor child is too young to understand the transaction as follows:

On the back of the bond, have the parent enter a request similar to: "I certify that I am the parent of Jane Doe with whom Jane Doe resides (or to whom legal custody has been granted). She is X years old and is not of sufficient understanding to make this request. John Doe on behalf of Jane Doe."

See <https://www.treasurydirect.gov/forms/sav0022.pdf>, page 7. There are other requirements, such as getting the minor's social security number and other data; all of that information is in *The Guide to Cashing Savings Bonds*.

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