



April 2005  
Dennis O. Williams  
Editor

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## REPOSSESSIONS “IN THE STEAL OF THE NIGHT”

By Michael E. Stewart

Having been involved in the recovery business for the past 35 years and in private investigations since 1967, I have gained a lot of experience in the field of collections and repossessions. It helps to have some background in financial matters. My background includes being a collection manager for both a bank and a car dealership in the Salt Lake area for 17 years. Most of the clients that are in need of repossession assistance are banks, credit unions, car dealerships, buy-here pay-here car lots, and title loan companies.

Self-help repossession can be done in all of the 50 states. Repossession is authorized under the Uniform Commercial Code (UCC). It has to be done without a breach of the peace. A breach of the peace means that if I cause someone to raise their voice, then I have committed the breach. In the state of Louisiana there has to be certain wording in the lease or security agreement along with procedures that have to be followed before repossession can take place. In several other states there is a “right to cure” provision indicating that the lessor or secured party can take possession after 20 days notice to the debtor to pay or face possible repossession of the security. It is also not acceptable for law enforcement to be called to the scene of repossession. If this occurs, it is no longer considered a self-help recovery but a state assisted repossession and no longer under the auspices of the UCC. Most states do not have any licensing regulation for repossessors. However, it will not be long before every state gets involved with regulating repossessors just like they have with private investigators and bail enforcement agents.

Insurance is available for repossessing companies but is very expensive. There are several repossessing companies that have banded together and created an

insurance company which offers insurance to repossessors for a price. Most clients require you to be insured for one to two million dollars in liability. This covers you for on hook coverage for repo trucks, garage keepers for storage of vehicles, and wrongful repossession.

Some of the security that is available to recover for financial institutions and other potential clients are:

|                        |                       |
|------------------------|-----------------------|
| Automobiles            | Boats                 |
| Mobile Phones          | Trucks                |
| Marine Equipment       | Medical Equipment     |
| Motorcycles            | Machinery             |
| Mobile Homes           | Recreational Vehicles |
| Construction Equipment | Airplanes             |
| Farm Equipment         | Computers             |
| Office Equipment       |                       |

Other services that a reposessor can provide clients include skip tracing or locating customers who have moved or skipped from the last known address. It is important to have access to contacts, computer data bases, informants, and other sources to locate these individuals. Field calls and the collection of delinquent payments are also part of the service that a reposessor can provide. You can collect payments, obtain information from the customer regarding telephone numbers and employment, and other information that will help get the client back in contact with, or maintain communications with a customer. Some of the other services a reposessor can provide are storage of collateral, collateral liquidation, and transport of vehicles to the auto auctions.

Some of the equipment that a reposessor will utilize are tow trucks, locksmith services, keys provided by



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As the year starts and I settle into this President's position, I would be remiss if I did not think back on the people who have held this position, and the huge responsibility associated with being President of the Private Investigator's Association of Utah. Then, like most of us I want to turn and run as fast as I can in the other direction. Just joking. I think I am up for this, and I think this is going to be an incredible year as we are growing rapidly toward the best numbers we have ever had for memberships.

Our last Annual meeting was the best we have ever had, in my opinion, and the speakers were very interesting. Many thanks to Kelly Madsen for all of her help, and making it such a great meeting. Our last Quarterly meeting was one of the best attended in many meetings, and the topic was beneficial to all of us who attended. If you missed it, you missed out on good information about taxes, deductions, and how to set your business up using either an LLC, or an "S" Corporation. Many thanks to Dennis Williams for having his accountant take time out of his busy day, and tax season to come and explain this to us. As each year starts out, we are reminded of new beginnings, and this year is no different. You have a chance to get involved in your organization, and make a difference in the direction we are taking, and where we will be at the end of the year. I encourage all of you to contact me, or any member of the Board, and discuss your feelings about issues, and directions you want this organization to follow. Your Board of Directors needs help in understanding what you want and what you need. Please contact us and let us know what your thoughts are.

This is my last year as the Chairman of the Department of Public Safety Private Investigator Hearing and Licensure Board, as I am being replaced. Mel Ashton was in this position prior to me, and I was lucky enough to be there with him for several years prior to his being replaced by Dennis Williams. I do not yet know who will replace me on the board but I do know it will be one of you, and I can only wish you the very best of luck as it is a great board, and a great opportunity to serve, and this board consists of people who care about our status, and that only the very best get a private investigator license.

I wish to thank all of you for electing me to this position, and I will try to live up to the standards set by my predecessors, and hope all of you are successful and prosperous this year.

Ronald L. Probert  
President

**IN THE STEAL OF THE NIGHT** continued from page 1

code or from a dealer, and lockout equipment made especially for the repossession of vehicles. Reporting is also very important in the running of a repossession business. Some of the forms used are:

- Notification of Repossession to Authorities
- Condition Reports/Photos of Vehicles/Property
- Personal Property Listing
- Personal Property Redemption Notice to Customer/Debtor
- Personal Property and Vehicle Release Forms
- Waiver and Consent to Voluntary Repossession
- Repossession Affidavit and Bill of Sale
- Vehicle Evaluation
- Bids

There are also several repossession associations that help promote, train, certify, and advertise for the recovery business. You must first qualify and then pay the necessary fees and yearly dues to become a member and maintain membership. I have been a member of the world's largest association; The American Recovery Association, Inc. since 1980. I have handled a lot of business for many of the banks, credit unions, and car dealerships across the country.

One of my more memorable assignments was a recovery in Wellsville, Utah. My son and I took a tow vehicle we call the De-Theft-Icon to repossess two vehicles. When we arrived both vehicles were present. I backed the truck up, hooked one of the vehicles, and was preparing to leave when the customer came out of the house with a rifle. He jumped in front of the truck and pointed the weapon right at us. My son hit the floor board. I exited the vehicle and approached the customer. I had a taser in my back pocket and seriously thought about using it to disarm the debtor. I am very happy that I didn't. I probably would have escalated the situation and I would have been subject to some potential legal problems. He was still pointing the rifle at the truck and my son. I told him that he better not shoot at the truck or my son and that I would let it down and unhook the vehicle. He said to drop the vehicle and get off the property. I complied. After pulling off the property I went ask to the customer and requested that he call the police. He asked me why. I told him that he just assaulted us with a deadly weapon. The local sheriff was called and arrived at the scene with several other officers. I'm sure they had a good talk with him about pulling a weapon. You cannot protect property with deadly force in the State of Utah. We then left the area. I reported the incident to the client the following day. I received a call from

the debtor two days later and he told me that I could come back and pick up the two vehicles. I told him, "No way." He said that he would not cause any problems. My son and I then made a second trip and were able to recover both vehicles for the client. Case closed.

Every day in this business I learn something new. The most important thing to remember is "Be Safe Out There;" that nothing is so important to recover if somebody is going to get hurt or even worse. Having patience, empathy, a good attitude, and good communication skills are important if you want to succeed in this profession.



**From the desk of the:**

## **Chairman of the Board**

### **PI Legislative Outlook**

The latter part of 2004, things looked great for defeating HR2971, "The Social Security Number Privacy and Identity Theft Prevention Act of 2004. Thanks to the efforts of NCISS and coalition partners, the bill did not make it out of the committee. The companion bill in the Senate, S2801 would have prohibited the use of Credit Headers to locate missing persons or witnesses in legal proceedings. Senator Diane Feinstein of California was the sponsor of this bill. CALI lobbied intensively with the staff of Senator Feinstein and the bill did not come to vote. Both bills were expected back in 2005. With congress reconvening, Senator Feinstein has introduced S 29, The Social Security Number Misuse Prevention Act. The Electronic Privacy Information Center has sent a letter to the Federal Trade Commission requesting examination of information brokers' use of Credit Headers. Early this year, Choice Point allowed a company access to their data and thousands of social security numbers and personal data were taken and used for Identity Theft. Lexus Nexus had their system broken into and several hundred names and personal data were stolen. Unfortunately, Choice Point did not notify the parties whose identity had been stolen. Lexus Nexus did notify but not timely. Choice Point, once some of the

parties raised a noise about their identities being taken and it hit the press, announced that they would notify all parties that had been affected. This has given the privacy advocates much ammunition to argue for privatizing social security numbers and driver's license numbers. Things will be touch and go this session to determine if we will continue to have access to social security numbers and credit headers. Many of the information brokers are truncating social security numbers and driver's licenses to implement damage control at the legislature. Choice Point has stated that they will only provide full social security numbers and full driver's license numbers to law enforcement and large corporations. They have 700 law enforcement departments on line and didn't state the number of large corporations. If they implement this, some of us that have been with them for years will have the choice of truncated social security numbers or dropping our accounts. Most of the information brokers are now truncating social security numbers and waiting for the pending reactions from their vendors that supply them the information. One of the major credit bureaus has already notified information brokers to whom they provide information, that they must truncate the numbers or they will cut them off from the information.

It is interesting to me that when I contracted with Auto Trac, now Choice Point in 1997, they wanted my PI license, my

business license, a copy of my add in the telephone book, a letterhead and a business card before they would sign me up. They began letting all kinds of companies on line with far less than I had to put up and that greed caused the problems that they are in that will impact on all of us in the industry. They truncated my reports in February and I called my representative. He said that I needed to be recertified. I sent them everything that they asked for two months ago and I still get truncated reports. They called me and said that I would be truncated from now on because I am not law enforcement, or a large corporation. They are fighting for their lives in congress. Two of their top executives sold a lot of sock just before the news of the theft hit the media. The SEC is looking into that situation.

An interesting note on the accuracy of databases! I have always said that a database is only a lead and that the information must be verified before providing it to a client. One of the women that had her information stolen from Choice Point asked Choice Point for a printout of what had been stolen. They did not give her a full report but the part they did give her had much misinformation about her. She said that they had PMB's and PO boxes affiliated with her that she had never used. Also some of the associated addresses were not places that she had lived and stayed. They had relatives that were not relatives, only the same last names.

This year should be very interesting as to what congress will do to make social security numbers unavailable to us. I go back to the knee jerk reaction

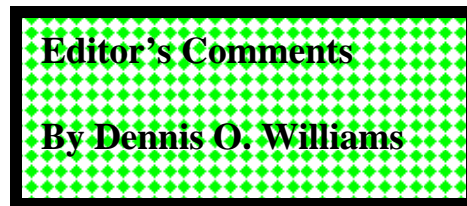
that caused the GLB bill to pass that severely curtailed bank information. Also, the changes to the FCRA that made employers provide Third Party Investigative Reports available in their entirety to the investigated party. Last year, this was amended but we had to live with it for two years. We certainly agree that social security and personal data

should not be available on the internet to the general public but state licensed PI's should have access for legitimate purposes.

Locally, PIAU monitors and lobbies for or against bills that affect private investigators. Nationally, all we can do is support NCISS. They do a fine job and fight hard to protect the sources that are important to us.

We need a voice in Washington. I sincerely hope that the letters that have been requested by NCISS from PI's around the country will bear weight in the decision that is before congress concerning privacy matters. At the current time, it doesn't look good for us.

Mel Ashton  
Chairman of the Board



### **Why the Private Investigator's Association of Utah belongs to the National Council of Investigation & Security Services (NCISS)**

It is easy for Private Investigators to take for granted the special privileges they enjoy by having access to information that is not available to the public. Our businesses depend upon it. But it is only because of the leadership provided by various individuals and organizations that these privileges are available to us. And the possibility of losing those privileges is constant. That is one reason why the PIAU has adamantly resisted any attempt to remove the requirement under Utah law that PI Agencies closely supervise any apprentices they employ.

And it is also the reason the PIAU is a member of the NCISS. NCISS gains its support from the many PI professional organizations throughout the country. The NCISS is in the forefront of protecting our industry. The members of the PIAU Board of Directors would like to share the following communication that we received from the NCISS.

"On Friday, April 8<sup>th</sup>, NCISS met with top leaders of the Federal Trade Commission to discuss the ramifications of the recent security breaches at Choice Point, banks and a subsidiary of Lexis-Nexis. Attending for NCISS were President, Brian McGuinness of Florida, Legislative Committee Chair, Bruce Hulme of New York, Legislative Committee member, Pierre Paret of Virginia, and Washington Representative, Larry Sabbath. Among those attending for the FTC were:

Director of the Bureau of Consumer Protection,  
Lydia Parnes  
Associate Director, Joel Winston (Financial Practices Division)  
Assistant Director, Andrew Smith  
Assistant Director, Peggy Twohig (Financial Practices Division)  
Associate Director, Lois Greisman (Planning and Information Mgt. Division)  
Assistant Director, Lee Peeler

"NCISS representatives expressed their concern that as a result of the recent breaches by data providers, private investigators have become the victims. Many are being denied access by data providers to information they have long been able to use in their investigations. This raises restraint of trade issues. Investigators are fearful that legislation could further restrict access.

"Hulme pointed out to the FTC that data providers had moved the issue of causation away from the security breaches at their locations holding the data and their lack of due diligence, and onto private investigators as an occupational class even though investigators had not allowed any breaches in their security. Information data sellers, financial institutions and government agencies have been the entities that failed to secure their data, and not private investigators whether in large firms or sole proprietorships.

“Furthermore, Choice Point’s lack of due diligence had been with individuals and firms purporting to be collection agencies, which are unregulated, and not with private investigators. NCISS questioned Choice Point’s recent re-credentialing of its longstanding private investigator client base and pointed out that alternative controls and measures might be instituted by information brokers to lessen the risk of their data being breached or being used for nefarious purposes. NCISS suggested that information brokers not accept money orders as payment nor allow the sale of data over the Internet to the general public.

“Hulme explained how such data is used in various investigations. He cited examples of successful investigations of different types, including identity theft, fraud, location of heirs, discovery of exculpatory evidence, and location of criminals. Case histories, with redacted personal information, that had been provided to NCISS by private investigators were turned over to the FTC for their evaluation in order to confirm our contention that the full SSN and DOB are necessary investigative tools.

“McGuinness presented information about how such access to data serves the judicial system in both civil litigation and criminal defense cases. He explained how integral private investigators are within the court system, often working behind the scenes on a wide range of cases. He also described use of a credit header search to reunite a mother with her child who had been abducted by the father. He emphasized the importance of utilizing SSN searches when locating female witnesses because of name changes through divorce and marriage.

“The FTC attendees asked how data could be protected without restricting those who need the data for legitimate reasons. They were particularly

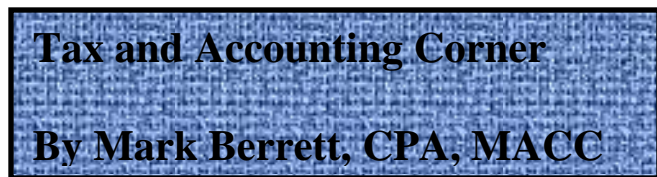
interested in assuring that data were accessed only for appropriate reasons. NCISS advised them that we favor strong sanctions against misuse of such information by anyone, including private investigators.

“Sabbath pointed out that the majority of ID thefts occur by low-tech methods, including pick-pocketing, stealing from mailboxes, theft by employees and dumpster diving. He said that PIs agreed that the general public should not be able to access personal information on the Internet and that NCISS supports legislation to require notice to consumers when breaches occur. NCISS also advised the FTC that it supports the concept behind Senator Feinstein’s S. 115, the Notification of Risk to Personal Data Act. He further suggested that ID cards, including health cards, should not display SSN’s.

“Asked what kind of information was essential to any exemptions for private investigators in future legislation, the NCISS representatives suggested language based on existing law, found in the Driver’s Privacy Protection Act.

“Discussion was also directed toward whether or not private investigators operating in states without licensing should be allowed access. NCISS advised that in situations such as this, those investigators could be required to sign an agreement with the data providers that they would voluntarily subject themselves to the most stringent state regulations existing. FTC officials asked NCISS to continue to keep them informed.

The above was submitted by Bruce H. Hulme, Chairman, NCISS Investigations Legislative Committee.



**Tax and Accounting Corner**  
**By Mark Berrett, CPA, MACC**

April 15<sup>th</sup> has come and gone. Now is the time to review last year and develop a strategy to reduce your tax bill and implement a system to keep documentation that will blow the socks off any IRS auditor. In this article I will give you several ideas to consider with your tax adviser to see if they will help

you in your tax situation. Maybe next April 15<sup>th</sup> will be a day to go skiing instead of worrying about how to make your tax payment and next years estimated tax payment.

### 1. Type of entity.

So you have decided to go into business or you have had a business for years. Your friend tells you he is an LLC and you should be also. What form of entity should you run your business. The main choices are:

- Sole Proprietorship
- Partnership
- S Corporation
- C Corporation
- Limited Liability Company or LLC

The simplest form of entity is a Sole Proprietorship. When you go into business, if you do nothing you are a sole proprietorship. In many situations a Sole Proprietorship is the best form to operate. It is inexpensive to set up and maintain, and works pretty well in many small situations. If your son has a paper route, a Sole Proprietorship is the best way to go. As your business dealings get more complex, consider changing or starting as an LLC. LLC's can be taxed as a partnership, S Corporation or a C Corporation. Many small businesses are set up as either a partnership or as an S Corporation. LLC's give you a shield from the outside world called a "corporate veil". Most people will never have to be shielded with a corporate veil, but if needed, you will be glad you went to the minimal trouble to set up an LLC.

### 2. Bookkeeping System.

Did your CPA give you a mean look when you brought your shoe box full of receipts? Then did you get shocked when he sent you a huge bill to sort through all your receipts? Well, there is an easier and less expensive way to organize your business. There are several software programs that can be used without having to spend a week with a programmer or your CPA to figure out. QuickBooks, Quicken, MYOB, Peachtree are several inexpensive options that will streamline your accounting and bookkeeping. Using one of these programs will not only make preparing your tax return easier for your CPA, but more importantly will give you information about your business that will help you manage and make better business decisions. Also, I always recommend to clients to set up a separate bank account for their business. Then, use that bank account to deposit your business revenues into and for all your business expenses. Keep your business and personal expenses separate.

### 3. Tax savings/planning ideas.

Here are several tax and planning ideas that are most applicable to small businesses. Please discuss these ideas with your tax professional to determine if they make sense in your situation.

Medical Insurance and Health care costs. For the self-employed, health insurance premiums are 100% deductible. That is a big savings that puts small business in line with large businesses. There are several ideas for deducting health care costs such as dental, doctor, prescription costs, etc. If a spouse is expecting large medical expenses in a year consider filing separate returns. Another idea is to set up a separate C Corporation to deduct medical expenses.

Hire your kids. If your children can or do work in your business, consider paying them up to the standard deduction amount. If you are a sole proprietor the payments are exempt from self employment tax if they are under 18 and may not owe any federal or state tax if they are under the standard deduction amount of \$4,850. If you have several children helping in the business that amount of tax savings can add up quickly. Another idea is to pay your children more than the standard deduction amount and contribute the excess up to \$3,000 into an IRA. The IRA amount will grow tax free and can be used to purchase their first home without penalty. That is a great way to get tax free money to your kids to get into their first home.

Retirement Plans. I tell my wife that I have three main financial goals: I want to contribute to charity, I don't want to go to jail, and I don't want to work until I die. What that means to me is that I contribute to charity regularly, make sure I do not get behind in paying my taxes, and I want to contribute to a retirement account. There are many options for retirement plans and one of the plans will work for you. I have a Roth IRA and contribute to it every year. This type of retirement account works for me because I have twenty years until retirement, and that money will grow tax free. The earnings will never be taxed. There are many other choices of retirement plans that are great for the self-employed.

Automobile Deductions. Cars are one of the most expensive assets in our businesses. I recommend to clients to keep track of all the automobile expenses in the company checkbook. At the end of the year I compare the actual expenses against the mileage rate. Yes, you have to keep a log of business mileage you use for the year. The IRS allows us to take the higher of the actual car expenses or the mileage rate. Most of the time the mileage rate will give you a larger

deduction, but not always. With rising fuel costs and repair costs, the actual expense may be higher.

**Estimated Taxes.** The worst part about being self employed is making quarterly estimated payments. Gone are the days of tax refunds because your employer held out lots of taxes from your paycheck. expenses, there is a \$1,000 in your company checkbook. You need to buy groceries so you write yourself a check for \$1,000. Immediately set aside in a separate savings account \$250. That savings account in most cases will be more than enough to pay your tax liability. Then next April you will be set to go skiing instead of worrying about finding tax money.

One last bit of business advice. Do not invest in something you know little about. Whether that is

The IRS wants you to be within \$1,000 at the end of the year when you prepare your tax return or you will owe a penalty. I suggest to my clients that they set aside 25 percent of the money they take out of their business checkbook to use for personal expenses. For example, after you have paid all your business

stock trading, currency trading, real estate, or a loan to a friend. Stick to what you know and be the best at what you know. Clients will be drawn to you if you are the best. Stick with your strengths and develop your expertise. Many happy returns in 2005.

Mark Berrett is a Partner in the CPA firm of Beech, Morley and Berrett. His business is focused on small business accounting and tax planning. He currently serves as a private citizen on the Department of Public Safety Private Investigator Hearing and Licensure Board.



**Annual Conference of the Private Investigator's Association of Utah  
By Kelly J. Madsen**

**Welcome New PIAU Members  
By Linda Cropp, PIAU Secretary**

The next annual conference of the Private Investigator's Association of Utah (PIAU) will be held on Friday, September 23, 2005 at the Law and Justice Center, 645 S. 200 E., Salt Lake City.

To join the PIAU or to contact any of our members, please go to our website at PIAU.COM and follow the instructions to print out an application.

The members of the PIAU would like to welcome all of the following as new members of the PIAU:

- Jake Allred
- Alysun K. Asher
- David C. Bancroft
- Mike Barker
- Ronald Brumitt
- Douglas H. Huntsman
- Kevin Johnson
- Holly Johnson
- Brooke Karrington
- Pamela Joan Lowe
- David W. Lundberg
- James McClelland
- Brian M. Ritucci
- Adam G. Rogers
- John Schroen
- Brigitte Stevenson
- Harold Wallace
- Isabelle Warnas