

# Breach of the Peace (Or how to avoid it)

When performing a repossession, a Breach of the Peace can be quite a common occurrence. The trick is avoiding the legal complications that go along with a repossession gone awry. But what is considered a Breach of the Peace (BOP)? Just understanding that is quite a task.

Part of the answer lies in the Uniform Commercial Code (UCC): The intent of the UCC and BOP is to deter violence, or the threat of violence, during the process of self-help repossession.

In order to avoid BOP, however, you must be able to define it. A clear definition of Breach of the Peace is not found in any state statute, much less in the UCC. The best rule of thumb is if the collateral recovery agent (repo man) is faced with potential violence or physical confrontation, he must retreat without the collateral. If he does not, then the chance of a true BOP increases to the point of certainty.

An example of general statutory law states, in part: "Who ever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a Breach of the Peace or disorderly conduct."

Since there is no clear and concise definition of BOP, many courts apply this test: Was debtor's premises entered by creditor or creditor's agent and if so, did the debtor or another acting on the debtors behalf refuse to consent to the entry and repossession?

So as you can imagine many acts can qualify as a BOP but the real trick is minimizing their effect. Any sort of violence is, of course, a huge problem. But it is not necessarily the fault of the recovery agent. He could have been attacked, or a multitude of other things could have been directed at him. It is important to look for patterns, for in the pattern is the truth.

An example is that you hire a new repo company, and you notice after a month or two, a regular stream of complaints, such as rude behavior, intimidation, complaints of physical contact. These are warning signs. Some of this might not be a problem, but if you get enough of these type of complaints, don't wait, take action. The best course is to simply stop doing business with the offending company. You might at some later date inform them as to why, but to continue to do business with a company that has little control over its employees, or chooses expediency over restraint, will be a costly mistake.

Of course, some of these complaints could have simply been made up by a vindictive debtor but again, if there is a pattern, you will have your answer.