

Mark A. Anderson's

# LAW TALK



February 2010

## TEEN TEXTING WHILE DRIVING IS A HUGE PROBLEM

And I'm going to raise awareness, but I need your help.....

It almost goes without saying that driving while distracted is a huge problem. When I first started driving, the only in-car distraction was listening to the radio. Then came the added distraction of talking on cell phones while driving. **But now the biggest distraction—and also the biggest danger to ALL of us—is the phenomenon of texting while driving.** Studies have shown that drivers who are texting are six times more likely to crash, and this kind of distracted driving is frequently causing more fatal crashes as well. As the cause of fatal crashes, texting has increased from 8% in 2004 to 11% in 2008, according to the National Highway Traffic Safety Administration. Handheld phone use while driving is illegal in most European countries and already 19 states and the District of Columbia have banned texting while driving.

**Texting while driving is illegal here in Texas for those under 18, but unfortunately many teens still text and drive.** So I am trying to do something about it. My focus is going to be on teens. Why teens? Well, they just love to text and they just happen to be our most inexperienced drivers. Those of you



who have kids (or grandkids) that are old enough to have a cell phone know exactly what I mean. Kids love to text. And when they start driving, it is tempting for them to try to text and drive at the same time. The NHTSA 2008 nationwide survey shows use of hand

held devices by teens is up considerably. This age group also has the highest statistics for fatal crashes: 16% of fatal

crashes caused by distracted driving in 2008 were by drivers under the age of 20.

So how bad are drivers who text? The magazine *Car and Driver* recently conducted a small study comparing texting while driving with drunk driving, and their results were surprising. **The participants were given a series of driving tests to perform while texting and then while intoxicated, and they actually did worse while texting.** The participants themselves were stunned at the results, because while everyone knows drunk driving is dangerous, few people realize how deadly texting while driving can be.

## HERE IS MY PLAN:

I am in the process of getting a ton of rubber bracelets made up (think the yellow LIVESTRONG bracelets that are very popular). My plan is work with local schools, possibly an organization within each school, to provide the bracelets and pledge cards. If a student signs the pledge to not text and drive, then the kid gets the cool looking bracelet. **Each bracelet will be imprinted with the following:**

**I PLDG 2 NT TXT N DRV**

If the school organization wants to sell the bracelets as a fund raiser, then that is great. The bracelets and the signed pledge cards will hopefully raise awareness among teens of the dangers of texting and driving. And just with drunk driving, raising awareness is the best way to attack this problem.

**I want this project to work, but I need your help.** I need suggestions on who to talk to at the school level. If any of you have a high school aged child who wants to bring this project to his or her school OR if you know someone at your local school who you think may be interested in taking on this project, then PLEASE contact me. I really need your help! I can be contacted by email at [mark@maafirm.com](mailto:mark@maafirm.com) or by calling **817-294-1900**.

**The Oprah Disclaimer:** I am working on this project with nine other injury lawyers around the country. We ordered our bracelets together to obtain bulk pricing. The day after the bracelets were ordered, Oprah announced plans for her own similar project, which promotes an online pledge not to text and drive. I applaud her efforts. I just wanted everyone to know my group did not steal her idea. And I like our idea better as it actually brings the issue directly in front of the kids. Plus, Oprah doesn't have the cool looking bracelets!!!

## Here is the Scoop on Texas Dog Laws (no, not that kind of scoop)

As a personal injury lawyer, I have seen my share of vicious dog attack cases. Some have been down right maulings; some have been the more typical "dog bite man in the leg" type of cases. But the injuries I have seen have really been bad. I find that there is a general misconception of what the actual law is. So, here is a quick summary:

### Civil Law:

This comes into play when the victim seeks compensation from the dog owner. There are two parts to the analysis: Is the dog owner liable under the law and, if so, who will pay? As far as liability goes, Texas is one of 18 states that still subscribes to the so called "one bite rule." This means that the victim of a dog attack can't pursue a claim against the animal's owner if this is the first time the dog has attacked or bitten someone. As far as who pays, well it depends on if there is any liability insurance in place. If the dog owner keeps the dog at home, then the owners homeowners policy will provide coverage. But what if the owner is a renter? Then the victim probably is out of luck because the renter will not be protected by the homeowner policy. In such a case, the injured party must try to get compensation from the dog's owner directly. But this, more often than not, is like getting blood out of a turnip.

### Criminal Law:

Lillian's Law was passed in Texas in 2007 after 78-year-old Lillian Stiles was mauled to death by a pack of Pit Bull-Rottweiler mix dogs. While the law increases the penalty for owners who fail to secure their dogs in cases that lead to serious injury or death, it does nothing to protect the victim of the attack. The law contains the harshest criminal penalties in the United States for dog owners who are found guilty, but it does not eliminate the "one bite rule." Even if a dog kills a person, there can be no civil or criminal penalties imposed if the dog has never bitten or attacked anyone.



My dogs Andie and Ellie would never hurt a flea. Unfortunately the same can't be said for many pets.

## The History of Valentine's Day

Here are some interesting facts about the origins of Valentine's Day and how it has been celebrated through the years.

- On February 14, 270 A.D., Roman emperor Claudius II, known as "Claudius the Cruel," beheaded a priest named Valentine for performing marriages. Claudius II had outlawed marriage when Roman soldiers began to refuse to go off to war because they wanted to stay with their wives.
- The oldest known Valentine was sent in 1415 A.D. by the Duke of Orleans to his French wife while he was imprisoned in the Tower of London. It is still on display in a museum in England.
- Valentine's Day was declared an official holiday on February 14, 1537, by England's King Henry VIII.
- In the Middle Ages, young men and women drew names from a bowl to see who their valentines would be. They would wear these names on their sleeves for one week. This is where the saying "to wear your heart on your sleeve" comes from, which means that it is easy for other people to know how you are feeling.
- Nearly 1 billion Valentine's Day cards are exchanged each year. Hallmark has over 1,330 different Valentine's Day cards.
- 73% of people who buy flowers for Valentine's Day are men. Only 27% are women.



## Selling or Buying a Home in a Distressed Market: Alternatives Can Only Lead to More Trouble

By: GUEST ATTORNEY Jeffrey A. Rattikin of Rattikin & Rattikin, L.L.P.



Today's market environment has made it extremely difficult for sellers and buyers of real estate to consummate a transaction under normal procedures. Due to the lingering effects of the recession, consumers are resorting to alternative ways for a buyer to get into a house they can't qualify for, or conversely, a seller to get out of a mortgage they can no longer afford.

Typically, today's alternative structures can be classified as one of three types of transactions. The first structure, commonly known as a "contract for deed", calls for a seller to transfer possession of the home to a buyer in return for buyer's promise to pay an agreed sales price at a stipulated sum every month. Until the sales price is paid in full, the seller retains the title to the property and can evict the buyer upon default at any time. Only at such time as the sales price is fully paid, often years later, will seller be obligated to give the buyer a deed, actually transferring legal ownership. Under this scenario, the seller is able to collect monthly payments from the buyer and apply them to his or her monthly mortgage obligations, and a buyer is able to begin making payments on a home without qualifying for a bank loan.

But therein lies a huge problem for the buyer. Under this arrangement, a buyer must make monthly payments to the seller for property that is not in buyer's name, and is subject to a pre-existing mortgage obligation. The buyer must hope and trust that the seller will continue to apply the payments to the existing mortgage on a home in which he no longer resides, or else the buyer may be subject to foreclosure, even if the buyer has paid current. The buyer must also hope and trust that when the entire sales price is paid, the seller will actually execute a deed transferring title to the buyer. If the original seller has passed away, the buyer could

be in for some major challenges from the heirs of seller, who will question the entire arrangement and the amount of payments received.

In addition, by their very nature, such a transaction would violate the terms of the existing mortgage's due-on-sale clause, giving rise to the lender's immediate right to foreclose and take the property back.

From a seller's prospective, the situation is not rosy either. While holding title, seller still retains liability for taxes, insurance and any accidents and damage which may occur on the property, now entrusted to the care of a credit-challenged buyer with little or no equity in the home. And to top it all off, the legislature has burdened such transactions of more than 3 year duration with extremely rigid rules which are cumbersome to comply with and subject to severe fines for failing to comply. Contracts for Deed are rarely a good idea for either side.

The second structure, lease purchase arrangements, are legally considered the same as Contracts for Deed, and buyers and sellers face the same type of risks. Despite their recent popularity, a desperate seller or buyer should be extremely wary of the dangers lurking beneath the surface of a lease purchase agreement.

The last structure of distressed real estate transactions involves true seller financing, whereby a seller presently conveys title in return for a promissory note and deed of trust mortgage. Though title has legally been transferred, the structure is still burdened by the fact that seller's existing loan has not been repaid, the transaction violates the seller's mortgage, the seller risks damage and bankruptcy delays, and insurance policies and tax/insurance escrows can be adversely affected.

The best solution? Find a buyer who can qualify for their own loan, and pay off the existing mortgage at closing. Short of that, however, sellers and buyers in difficult present situations should be extremely cautious in entering into any of the above real estate structures.

**Note from Mark: Jeff is a Board Certified Real Estate Lawyer practicing in Fort Worth. I have known Jeff for years and highly recommend him. He is the go-to guy for all legal issues related to real estate. He can be reached at 817-737-7701.**

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## The BEST Car Insurance Buying Tip EVER

I deal with car insurance issues every single day and see insurance issues from a unique perspective. I don't sell car insurance, but I sure deal with a lot of folks who would change the way they bought insurance if they had to do it over again.

I am not talking about raising your liability limits. I am talking about buying (more) uninsured motorists coverage. This is the type of insurance that takes care of you, the policy holder, if the other driver has no insurance or does not have enough insurance to adequately compensate you for your damages. Is this type of insurance that important? YES!! Texas leads the nation in uninsured motorists and here in North Texas about 25% of the drivers on our roads have no insurance at all. And most that do have insurance only have the state mandated minimum of \$25,000 in coverage.

If a car accident seriously injures you or a family member, you are going to be out tons of money (even if you have health insurance) unless you purchased UM coverage. You might miss work or, worse yet, you might end up disabled and not able to work ever again. The absolute best way to protect yourself and your family is to buy UM coverage. This type of insurance is not that expensive and sure does make a difference if you are in an accident. So don't delay: call your insurance agent today or go online and price this important coverage.

### **NEED A NOTARY?**

If you need the services of a notary, please stop by the Fort Worth office anytime between the hours of 8:30am and 5:30pm. We will be happy to provide notary services

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