

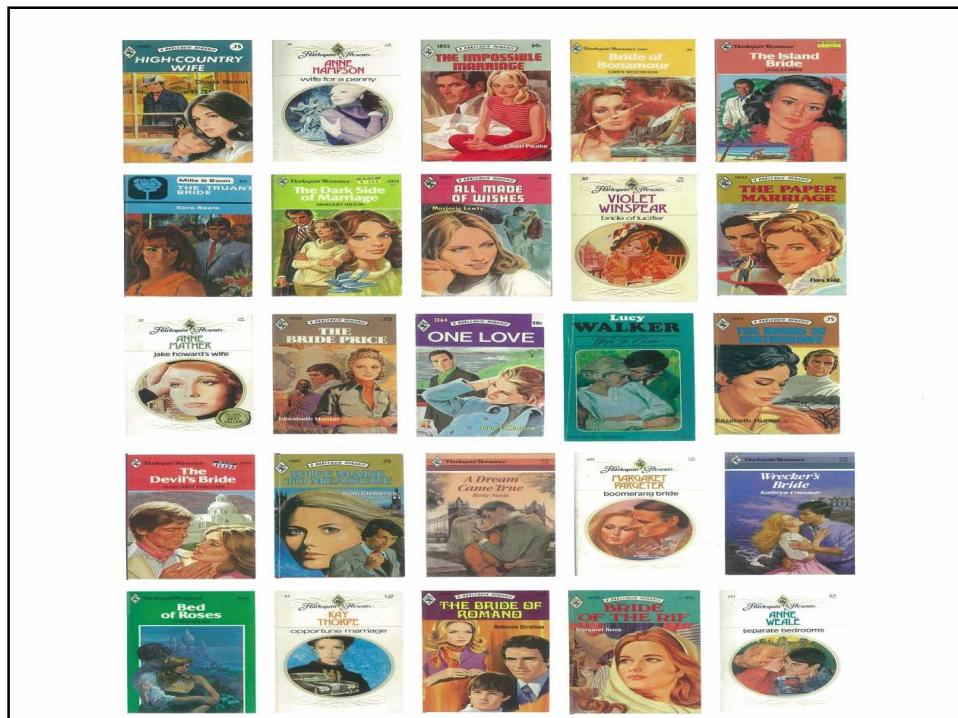
 RICKETTS, HARRIS LLP  
BARRISTERS & SOLICITORS

...problem solvers



**RELATIONSHIPS AND REAL ESTATE**

**MICHAEL COCHRANE**  
**RICKETTS, HARRIS LLP**  
**REIN - JULY 13, 2010**





### What Kinds of Relationships?

1. Married
2. Common Law (Ontario 3 years or child together)
3. Living together (less than 3 years)
4. Separated (after common law or marriage)
5. Divorced
6. Separated/Divorced/Widowed and Living Common Law
7. Children (adult and otherwise)
8. Parents (dependant/joint finances?)
9. Your business partner – and his/her relationships



### What Kind of Real Estate?

- **Homes**
- Condos
- **Apartments**
- Cottages
- **Investment properties**
- Companies that hold property



### What Kinds of Problems Can Arise?

- **You and your spouse could separate**
- You or your spouse could die
- **You or your spouse could become incapacitated**
- Your business partner could experience separation, death or incapacitation

What happens to your real estate?

Let's look at some examples...



Your marriage ends...

- **The value of all property owned by either spouse will be in the pot for division**
- Real estate will need to be appraised
- **An order freezing assets may be made**
- If property is your home one spouse may get exclusive possession of it
- **Companies holding real estate are valued too**
- As a part of final judgment the court may order real estate sold or transferred



Your common law relationship ends...

- **Huge misconceptions**
- Every province is different
- **Spousal support rights**
- Most provinces give common law spouses no property rights regardless of time spent together
- **Spouse must sue to prove contribution to property (constructive trust, quantum meruit)**
- Property tied up



Your “living arrangement” ends...

- **No common law status**
- No spousal support rights
- **No property rights**
- But still may sue (constructive trust, quantum meruit)



You or your legally married spouse could die...

- **If you made a will it will be respected**
- Unless you gave surviving spouse less than they would receive in a divorce
- **Survivor spouse can throw out your will**
- Survivor spouse can sue estate for support
- **Real estate will be tied up**



You or your common law spouse could die...

- **If you made a will it will be respected**
- Common law spouses have no right to throw deceased's will out (Ontario)
- **Survivor spouse may have to compete with**
  - legally married previous spouse
  - children from first marriage
  - siblings of deceased
  - parents of deceased
- **Survivor spouses and children can sue estate for support**



RICKETTS, HARRIS LLP  
BARRISTERS & SOLICITORS



You or your spouse could become incapacitated...

**If you cannot make decisions about your own care or finances  
someone else will need to do it for you.**

Rent deposits?  
Bill payments? Taxes?  
Mortgage payments?  
Refinancing?

**Financial institutions will insist on legal authority to deal with  
accounts and real estate.**



RICKETTS, HARRIS LLP  
BARRISTERS & SOLICITORS



Your business partner...

- **separates from his/her legally married spouse**
- separates from his/her common law spouse
- **dies without a will**
- has his/her will challenged by surviving legally married spouse
- **has his/her estate sued for support**
- is incapacitated and cannot make decisions



RICKETTS, HARRIS LLP  
BARRISTERS & SOLICITORS



## Now What Do I Do?



RICKETTS, HARRIS LLP  
BARRISTERS & SOLICITORS



[What Protections Are Available?](#)

- 1. Marriage contracts**
- 2. Cohabitation agreements**
- 3. Wills**
- 4. Powers of Attorney**
- 5. Partnership agreements**