TOOLS TO PROTECT YOUR REAL ESTATE ASSETS
2 CREDIT HOURS

I. **VALUATION OF REAL PROPERTY IN NEW YORK (5 MINUTES)**

II. **PRENUPTIAL AGREEMENTS IN NEW YORK AND WHAT IT MEANS FOR BUYING AND SELLING REAL ESTATE (5 MINUTES)**

III. **PROPERTY DIVISION IN NEW YORK AND EQUITABLE DISTRIBUTION (5 MINUTES)**
   - **a.** Does equitable always mean 50/50?

IV. **COMMON METHODS OF TITLING AND HOLDING PROPERTY IN NEW YORK AND ITS IMPACT ON FUTURE DIVORCE PROCEEDINGS (5 MINUTES)**
   - **a.** Ownership as an LLC or Trust
   - **b.** Joint Ownership
     - **i.** Tenants in Common
     - **ii.** Joint Tenancy with Rights of Survivorship
     - **iii.** Tenancy by the Entirety

V. **WHAT TO BE AWARE OF WHEN ENTERING A LISTING AGREEMENT BETWEEN DIVORCING SPOUSES (5 MINUTES)**
   - **a.** What are the terms of sale?
   - **b.** Is there any document dictating terms of sale?
   - **c.** Who is in control of the sale?
   - **d.** Who can you speak to about the sale and share information with?
   - **e.** What to do if you must go to Court?!

VI. **WHAT TO KNOW AND BE AWARE OF WHEN REPRESENTING THE DIVORCING CLIENT AT CLOSING (5 MINUTES)**
   - **a.** Is there a prenuptial agreement?
   - **b.** Is there a divorce settlement agreement?
   - **c.** How should proceeds be distributed?
   - **d.** The Mansion Tax; Transfer Taxes and Capital Gains Treatment Between Divorcing Spouses

VII. **WHAT TO KNOW WHEN HELPING A RECENTLY DIVORCED CLIENT OBTAIN NEW HOUSING (10 MINUTES)**
   - **a.** Will a cosign be necessary?
   - **b.** Impact of amount and duration of spousal maintenance?
   - **c.** What documents can be relied upon – final or pendente lite and its impact?
   - **d.** Asset Distribution and Its Impact on Securing Housing
   - **e.** Child Support: Income or Not?

VIII. **WHAT CAN YOU DO, AS THE REAL ESTATE AGENT, TO HELP? (5 MINUTES)**
   - **a.** Benefits of a Collaborative Approach
   - **b.** Drafting of and Understanding the Divorce Settlement Agreement
   - **c.** Common Mistakes and Pitfalls to the Transaction When a Divorce is Pending

IX. A CLOSER LOOK AT DIFFERENT WAYS TO HOLD TITLE TO REAL ESTATE (45 MINUTES)

a. Tenancy in Common: This is a shared ownership of property where each owner owns a share of the property. These shares can be freely transferred to other owners both during life and via a will, and can be of unequal size unlike a joint tenancy, as set forth below.

b. Joint Tenancy with Right of Survivorship: This type of ownership has a right of survivorship, meaning it automatically passes to other owners when one owner dies, allowing you to avoid probate. New York law assumes that property is owned by tenants in common, which does not have a right of survivorship.

c. Tenancy by the Entirety: A type of concurrent estate in real property held by Spouses whereby each spouse owns the undivided whole of the property, coupled with the Right of Survivorship, so that upon the death of one, the survivor is entitled to the decedent's share. Upon divorce, the property is then held by the former spouses as tenants in common.

d. Ownership by LLC: An LLC is a business entity that is separate from its owners, like a corporation. But unlike a corporation, which must pay its own corporate taxes, an LLC is a "pass through" tax entity, which means that business profits and losses pass through to its owners, who report them on their personal tax returns. This makes it a popular form of ownership for some investors to purchase property. But it may also be attractive for personal residences due to at least some anonymity it can provide. All cash purchases by LLCs are subject to additional scrutiny by FinCEN, however.

e. Trusts: In trusts, the real estate is titled in the names of the trustees of the trust. Trusts are broken down into two categories: (1) Revocable Trust and (2) Irrevocable Trust. Let's take a look at the qualities and nuances of both.

    i. Revocable Trust (also known as a Living Trust is): a Trust that can be controlled by the Grantor during his or her lifetime. The Grantor can even name himself or herself as the Trustee (or Co-Trustee) and retain ownership and control over the Trust, its terms and assets. Some other characteristics:

        1. The Grantor may also make provisions for a successor Trustee to manage the Trust in the event of the Grantor's incapacity or death, at which point the Revocable Trust becomes an Irrevocable Trust.

        2. Flexibility. It can be dissolved at any time should the Grantor's circumstances or intentions change.

        3. Although a Revocable Trust may help avoid probate, it is usually subject to estate taxes. It also means that during the Grantor's lifetime, it is treated like any other asset the grantor owns.

    ii. Irrevocable Trust: Typically transfers your assets out of the Grantor's Estate and potentially out of the reach of estate taxes and probate. However, the Grantor cannot alter it after it has been executed. Therefore, the Grantor must be 100% certain because once it is created, the Grantor will lose control over its assets and cannot change any terms or decide to dissolve the trust. Characteristics include:

        1. An Irrevocable Trust is generally preferred over a Revocable Trust if the Grantor's primary aim is to reduce the amount subject to estate taxes by removing the Trust assets from the Grantor's Estate. Also, since the assets have been transferred to the Trust, the Grantor is relieved of the tax liability on the income generated by the Trust assets (although distributions will typically have income tax consequences)

2. Assets in Irrevocable Trusts have greater protection from creditors and anyone else seeking to obtain a judgment against the Grantor because the Grantor no longer owns the assets; the Trust does.
3. Preventing misuse of your assets: an irrevocable trust can distribute your assets to heirs or beneficiaries on a conditional basis, as in the example of monthly payments.
4. One potential downside is, generally speaking, an Irrevocable Trust is generally not revocable or changeable. Although there are some exceptions to that general rule but they are beyond the scope of this class.

X. FACTORS FOR SELECTING HOW TO HOLD TITLE TO REAL ESTATE (30 MINUTES)

a. Will the property be owned a primary residence?

- **i.** It is important to understand that holding title in an LLC (and sometimes in Trusts) will prevent the owner's from receiving the NYC Coop/Condo Tax Abatement.

b. Does either Spouse have children from a previous marriage?

- **i.** If so, consideration should be given to whether or not the right of survivorship is desired. This is especially so when the property is purchased as an investment, as joint tenants or tenants by the entirety would automatically pass the deceased spouses' ownership interest to the surviving spouse.
- **ii.** On the other hand, ownership as tenants in common would allow each spouse to devise his/her interest as they please upon death.

c. If the married couple is planning to help purchase a place for a child or step-child but also want title to the property

- **i.** This would eliminate tenants by the entirety but consideration will still need to be given to whether the right of survivorship is desired (i.e. joint tenancy or if not tenants in common). It's possible that instead title in an LLC or Trust could make sense as well.

d. Tax planning

- **i.** Perhaps a Trust or LLC could make sense depending on the situation