

## **Ann-Margaret Carrozza, Esq.**



Ann-Margaret Carrozza, Esq. is a practicing Asset Protection and Estate Planning Attorney who also served for 14 years as a New York State Assemblywoman. She chaired the E.P.T.L subcommittee on trust reform and sponsored numerous pieces of estate planning legislation. Ann-Margaret served as the Female District Leader of the Jefferson Democratic Club for 10 years.

She has served as an executive member of the N.Y.S. Bar Association, and is past Chairperson of the Long Island Alzheimer's Foundation Legal Advisory Board. She is a member of the Legislative Women's Caucus and the National Academy of Elder Law Attorneys. Ann-Margaret has served as a member of the Surrogate's Court Advisory Committee to the Chief Administrative Judge of N.Y.S. She has the highest possible attorney rating (AV Preeminent) by Martindale Hubbell.

A frequent lecturer, Ann-Margaret has spoken before hundreds of civic, political and professional groups. She has served as the Keynote speaker for the NYS Bar Association annual Trusts and Estates meeting, Alzheimer's Foundation of America, and many others.

Ann-Margaret is regularly featured expert contributor to TV programs such as Dr. Phil, Access Hollywood, ET, Extra, Inside Edition, Good Morning America, FoxBusiness, The Doctors, and CNN. She has been quoted by the Wall Street Journal, Crain's, The New York Times, USA Today, The Washington Post, Money Magazine and Marie Claire.

She is the author of *Love & Money, Protecting Yourself from Angry Exes, Wacky Relatives, Con Artists and Inner Demons*, Skyhorse Publishing, 2019, as well as many articles for the NYLJ, Huffington Post among others.

The Law Offices of Ann-Margaret Carrozza provide Estate Planning, Elder Law, and Asset Protection guidance to families and individuals. We also handle Guardianships, Will Contests and Medicaid Applications. 213-38 40 Ave., Bayside NY 11361

[www.myelderlawattorney.com](http://www.myelderlawattorney.com) 718.224.4746

## LAW OFFICES OF ANN-MARGARET CARROZZA

213-38 40 AVENUE

BAYSIDE, NY 11361

718.224.4746

[WWW.MYELDERLAWATTORNEY.COM](http://WWW.MYELDERLAWATTORNEY.COM)

### 2020 Update -Elder Law and Estate Tax Planning: Frequently Asked Questions

1. Should I/we put the house into the children's names to protect it from long term care claims and estate taxes? Never! A simple transfer will result in the loss of your property tax exemptions, it will result in negative capital gains consequences to the kids and the house will be exposed to the children's liabilities, such as divorce claims.
2. Will a Revocable (Living) Trust protect the house? No. If you can take your house and other assets out of the trust whenever you want, then so can a nursing home. Moreover, to the extent that you have access to the trust assets, they are completely includible in your gross taxable estate at death. Only an irrevocable trust can help with long term care and estate tax planning.
3. Does Irrevocable mean that nothing in the trust can be changed? No. If the trust is properly drafted, then you can retain the ability to remove and replace your trustee. You can also retain the ability to change your beneficiaries. If your house is in the trust, it can still be sold, but only with your written permission. Retaining the ability to remove and replace the trustees is important psychologically, but it will also enable the trust to qualify as a Grantor trust for income tax purposes thereby obviating the need to file a separate income tax return for the trust.
4. When do estate taxes kick in? Each person has a federal credit of \$11.58 mil and a NYS credit of \$5.85 mil.
5. If each person can leave \$5.85 mil free of NYS (and federal) estate taxes, then how much can a husband and wife leave together? This is sort of a trick question. Without credit shelter trust planning, we end up losing the credit of the first spouse to die. If an individual or couple has more than \$5,850,000, then we need to explore tax planning options.
6. Can I avoid estate tax by putting named beneficiaries on my accounts? No. If it were that simple to avoid estate taxes, then the government wouldn't collect any. Avoiding probate does not, in and of itself relieve us of estate tax obligations.
7. What if the estate is Greater than \$11,700,000? Then we will need to rely on some combination of LLPs, LLCs and trusts. First, we create a business entity and fund it with real estate and/or securities. Then we have a child or children contribute cash or securities valued at 1% to 10% of all assets. The business entity will then issue stock or

membership units of two classes. The child will be given non-voting units or “B” shares that are proportionate to his or her contribution. We then have the business entity valued, and should benefit from “Minority Interest” and Lack of Marketability” discounts of approximately 30 to 35%. The parent can gradually gift his or her 95% interest to the children. All of the post transfer growth and appreciation will permanently escape transfer tax.

8. Can I avoid buying Long Term Care Insurance and rely solely on Medicaid Planning?  
No. Medicaid should really be viewed as the payor of last resort. We have seen eligibility restrictions tighten over the past 10 years. This trend will surely continue. Many remember when the so-called look-back period was 3 years. It is now 5. There is a bill in Congress now that would make it 10. The long term care insurance options have never been better. At the very least, you should educate yourself about what’s out there.
9. One of my children needs more help than the others. How should this be dealt with in the will? Whenever possible, it is advisable to treat your children equally under the will. This will prevent hurt feelings and discord between the children. If you wish to provide more for someone, better to do this outside of the will. A separate account or CD can have one child’s name as the beneficiary. This will pass automatically upon death and not be counted when the will leaves everything “equally”.
10. I own my home and live there with my second husband. How can I protect him if I die first? I would avoid giving him the house under the will. What if he dies 1 year after you. His will leaves everything to his children, not yours. Better to give him a right to occupy the home upon your death. This right of occupancy can be made to terminate upon the earlier of his death, nursing home admission or cohabitation with an unrelated person. (Not in my house-thank you!)
11. What is the difference between a Health Care Proxy and a Living Will. A Health Care Proxy allows you to appoint an individual to make health care decisions for you in the event that you are unable to express yourself. The living will, on the other hand, allows you to state your subjective preferences regarding health care treatments ahead of time. Within the Living Will, I can state, for example, that I don’t wish to live in a permanent vegetative state dependent upon some machine and fluids from a bottle. In that situation, my living will directs my family to “pull the plug”. I point out to them though that this does not give them license to disconnect my computer and dump out my Chardonnay.
12. How should I provide for a child with a special problem? If a child has a developmental disability, long term illness, shaky marriage, gambling or substance abuse issue, consider placing his or her interest under your estate into a trust. The assets in trust will not have an impact on Medicaid or SSI. The trust will also protect the assets from other liability issues.
13. Was Spousal Refusal abolished as part of the recently passed NYS budget? No, the Governor’s proposed budget would have eliminated this protection for the “well spouse” but it did not pass as part of the final budget.
14. Bottom Line? Laws and life change. Create flexible documents and review them yearly.

## Test Your Trust IQ, by, Ann-Margaret Carrozza, Esq.

“Put not your trust in money, but put your money in trust” counseled Oliver Wendell Holmes nearly 100 years ago. The advice remains sound- depending upon whether you select the right trust for your situation. Answers to the following questions should point you in the right direction.

1. A Trust sounds too complicated. Can't I simply put my house in the kids' names, to protect it from future possible long term care expenses? **NO!!!**

A simple transfer of the house to the children will result in the loss of your STAR property tax exemptions. It will also result in negative capital gains consequences to the kids. Last but not least, the house will be exposed to the children's future possible liabilities, such as divorce claims. To prevent a future possible ex-daughter-in-law from having an ownership interest in your home, brush up on some trust basics:

2. Does a Living or Revocable Trust protect one's assets in the event that Long Term Care is needed? **NO**

Think about it. A Revocable Trust allows me to serve as my own Trustee and have access to the trust assets whenever I wish. How, then, can I turn around and expect a Nursing Home to disregard the assets in the trust? Because I can get 'my hot little hands' on the assets whenever I wish, then so can a nursing home! Contrary to the claims of many Revocable Trust promoters, (my mother is a regular at these seminars for the free refreshments) this estate planning tool should not be used if one's goal is to protect assets from future possible health care costs.

3. Is it possible to protect one's assets without using a totally Irrevocable Trust that can never be changed? **YES**

It is true that an Irrevocable Trust is the best way to protect one's assets from being decimated by long term care expenses. What comes as a surprise to many, though, is that the trust does not have to be totally irrevocable. I view trust drafting as an art form. A properly drafted trust will provide the person creating it (the Grantor) with as much retained power as possible. If our goal is to protect the home from future possible Long Term Care expenses, then the Grantor does not have

to give up all ownership rights. The terms of a good Asset Protection Trust will allow me to change the person I've selected as my trustee at any time. This power comes in handy in the event that I have a falling out with my Trustee or they move away. It is also a good idea to retain the ability to change one's named beneficiaries. I may initially name my 3 children to be equal beneficiaries upon my death. Life's curve balls, however, may cause me to want to change this in time to come. If a child were to predecease me, I want to be able to give his or her share of the trust to my grandchildren, rather than to an in-law. A good trust will provide that the real estate can still be sold, but ONLY with my written permission. Will the trust cause us to lose property tax exemptions? No (Thanks to legislation I sponsored in 1998).

The best part about the Asset Protection Trust, is that upon my death, my named beneficiaries receive all trust assets without probate, and all built in capital gains are totally eliminated.

Ann-Margaret Carrozza is an attorney, author and TV legal contributor who also served for 14 years as a NYS Assemblywoman. She can be reached at 718.224.4746. Office locations: Bayside, and Port Jefferson. [www.myelderlawattorney.com](http://www.myelderlawattorney.com)