



## DRA Survey Respondents Discuss Use of Promissory Notes

*ElderLawAnswers recently surveyed elder law attorneys around the country to determine the lay of the legal landscape four years after the passage of the Deficit Reduction Act of 2005 (DRA). The survey was conducted in fall 2009 and received responses from 71 attorneys in 25 states. In addition to an online survey, we interviewed several attorneys in different states. We will be reporting on our findings in this and subsequent newsletters over the next several weeks. This installment is on the use of promissory notes as a post-DRA planning strategy.*

Promissory notes are a very popular planning strategy among the attorneys we spoke with; about half of attorneys responding to the online survey reported that the strategy is allowed in their state. Wisconsin ElderLawAnswers member attorney [Timothy Crawford](#) is using promissory notes only for married couples in his state, believing the notes don't work as well for single individuals because they drive up the individual's income. By contrast, New York member attorney [Bernard Krooks](#) uses promissory notes only for single individuals because New York is one of the few states that allows spousal refusal for married couples. When he is planning for a married couple, Krooks finds spousal refusal to be more effective planning technique than promissory notes.

Ohio ElderLawAnswers member attorney [Laurie Steiner](#) is another attorney favoring promissory notes. When we spoke to her two years ago, case workers were having a hard time understanding the notes, but she now reports that the case workers she deals with have received training and cases are going more smoothly. While annuities are allowed in Ohio, Steiner prefers to use promissory notes because they give her more flexibility in structuring payments --and she can keep the money in the family. Indiana only recently implemented the DRA, so it remains to be seen what happens in practice. Indiana member attorney [Keith Huffman](#) believes that promissory notes will be accepted as long as the wording is correct. He is anticipating encountering families with improperly drafted promissory notes that will have to be fixed or else the note will be considered a transfer.

Rhode Island attorney Peter Hainley has used promissory notes in a unique way. He has had a promissory note approved as a de facto annuity back to the community spouse. His clients -- a husband and wife -- gave \$15,000 to their son. The promissory note provided that the son would pay it back in equal installments to the community spouse for the next six months. He believes this method may replace the formalized annuity and allow the family to retain control of the cash.