

[Main ELA Home](#) [About Us](#) [Contact Us](#) [Help](#)



[Print This Page](#) [Email to Friend](#)

# DRA SURVEY RESULTS ON HOME EQUITY LIMITS, HARDSHIP, AND STATE BUDGET IMPACTS

## LAST UPDATED: 3/4/2010 2:57:37 PM

*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 have been reporting on our findings in newsletters over the past several weeks. This final installment is on home equity limits, the use of undue hardship exceptions, and how state financial crises are affecting elder law attorneys' abilities to do their jobs.*

### Home Equity Limits

The majority of states have set the home equity limit at \$500,000. According to responding attorneys, six states New York, Massachusetts, Wisconsin, Hawaii, and Connecticut -- have increased the limit to \$750,000.

With regard to protecting the home, Wisconsin ElderLawAnswers member attorney [Timothy Crawford](#), likes to use a life estate coupled with a special power of appointment, which he calls the "right to change your mind agreement." The client still owns the home and the kids own the right to inherit the home. The power of appointment gives the client the right to change his or her mind and leave the house to someone else. Crawford prefers this method to an income-only irrevocable trust because it is more flexible. He says his clients like it better because they feel they still own their home. (Crawford explained his agreement in more detail in a January 20, 2010, ElderLawAnswers conference call. To listen to the call or to download Crawford's numerous accompanying documents, go to our [Audio Archive](#). )

According to attorney [Paul Hicks](#), West Virginia actively protects the house. The state has even filed causes of action in federal court, arguing that the state doesn't have to go after a recipient's home. Rhode Island ElderLawAnswers member attorney [Peter Hainley](#) also says he can completely save the home from a Medicaid lien and can convert countable cash resources into a protected principal residence to pass onto heirs.

### Undue Hardship Exception

The undue hardship exception continues to be rarely used and tough to get approved. Sample comments about the exception include "practically ignored," "applicant's life must be in danger," "non-existent," "doesn't work even when the nursing home is the protagonist," and "tried unsuccessfully several times." A respondent from Minnesota states that the attorney must "focus on financial exploitation as ground for getting a waiver."

### Budget Issues

The attorneys we spoke with reported that the current financial crisis is affecting Medicaid eligibility and administration. In Ohio, ElderLawAnswers member attorney [Laurie Steiner](#) says the state is looking for any excuse to deny applications. For example, she recently went to a hearing over a family care agreement where the hearing officer found the agreement invalid because it was not notarized, which had not previously been a requirement for caregiver agreements. She also says the state is "dragging their feet" and she frequently has to go to a hearing because she can't get an answer from the state.

New York member attorney [Bernard Krooks](#) says his state has similar budget issues and is looking at cuts in long-term care and possibly eligibility changes. According to Krooks, one area that has been affected is passing a house to a caregiver child. The state had historically not inquired whether the child was actually providing care; as long as the child lived in the house for two years, then the parent could transfer the house to the child. Now counties are asking for documentation of care.

Kansas attorney [Molly Wood](#) reports that the administration of Medicaid in her state is being hampered by budget constraints. The workers processing the applications haven't done it before and don't have adequate training, so there has been an uneven application of rules. Wisconsin, too, has problems with training, reports Tim Crawford, with "case workers who didn't know what was going on," which has created a lot of frustration. Crawford believes that further restrictions are coming. He is convinced that some time in the next few years, the five-year lookback will become 15 years with regard to real estate because the states' "biggest money maker is collecting on homes."

## DRA Survey Wrap-Up

Even with the DRA's stricter rules, there are still many planning strategies that are working. Promissory notes, annuities, and gifting are all viable options in many states. As one attorney from Wisconsin noted, "reports of the demise of elder law practice are greatly exaggerated." While attorneys are adjusting to the changes wrought by the DRA, however, new obstacles are being created by budget problems in many states.

***Our sincere thanks to our many respondents for taking the time to complete the survey and share their experiences and insights with their elder law colleagues.***

 [Print This Page](#)    [Email to Friend](#)

[Home](#) | [About Us](#) | [Contact Us](#) | [Sitemap](#) | [Find an Attorney](#) | [ElderLaw Info](#) | [State Information](#)  
[Resources](#) | [Discussion Forum](#) | [For Attorneys](#)

[\[Disclaimer\]](#)   [\[Privacy Statement\]](#)   [\[Security\]](#)

© 2008 ElderLawNet, Inc.