ESTATE PLANNING

Fear of Losing Home to Medi-Cal Contributed to Elder Abuse Case

By Attorney Jeffrey Hall, CPA, JD

A California daughter and granddaughter's fear of losing their home to Medi-Cal may have contributed to a severe case of elder abuse. If the pair had consulted with an elder law attorney, they might have figured out a way to get their mother the care she needed and also protect their house.

Amanda Havens was sentenced to 17 years in prison for elder abuse after her grandmother, Dorothy Havens, was found neglected, with bedsores and open wounds, in the home they shared. The grandmother died the day after being discovered by authorities. Amanda's mother, Kathryn Havens, who also lived with Dorothy, is awaiting trial for second-degree murder. According to an article in the *Record Searchlight*, a local publication, Amanda and Kathryn knew Dorothy needed full-time care, but they did not apply for Medi-Cal on her behalf due to a fear that Medi-Cal would "take" the house by claim or lien.

It's a common misconception that California will immediately take a Medi-Cal recipient's home. Nursing home residents do not automatically have to sell their homes in order to qualify for Medi-Cal. In California, the home is an "exempt" asset for eligibility purposes and so there's no need to sell (or spend-down) the house. However, even though the house is not subject to "eligibility" considerations, there is "back-end" work that requires an experienced Medi-Cal/Elder Law attorney who can reposition the title of the assets so that upon the death of the “institutional spouse,” the house can be saved from “recovery” by California. This work cannot be performed DIY, or by Legal-Doom, you must engage in a real professional in this field. The Elder Law Attorney will retitle and gift (as the case may be) to protect assets. This can only be accomplished if there are sufficient gifting authorities in both the Trust and Durable Power of Attorney which is why you need to work closely with an Elder Law Attorney as a family member begins the institutional process.

After a Medi-Cal recipient dies, the state may attempt to recover Medi-Cal payments from the recipient's estate, which means the house would likely need to be sold. But there are things Medi-Cal recipients and their families can do now to protect the home.

A Medi-Cal applicant can transfer the house to the following individuals and still be eligible for Medi-Cal:

- The applicant's spouse
- A child who is under age 21 or who is blind or disabled
- Into a revocable trust.

Please note that title to the “institutional spouse” must be transferred “prior” to death; if not California can and will make a claim against the assets held in the name of the decedent. So, with a little advance planning, there are other ways to protect a house. A life estate can let a Medi-Cal applicant continue to live in the home but allows the property to pass outside of probate to the applicant's beneficiaries.

The moral is: Don't let a fear of Medi-Cal prevent you from getting your loved one the care they need. While the thought of losing a home is scary, there are things you can do to protect the house. To find out the best solution for you, speak with your neighborhood Elder Law Attorney -- Jeffrey Hall, about preparing an estate plan with Medi-Cal gifting language to protect your family. You may visit his website at www.HallLawGroup.com or call (925) 230-9002.

Disclaimer: This information is not intended to be legal advice and nor should it be relied upon without first speaking with an attorney.