

ABC NEWS

How enduring power of attorney documents enable children to rip off the elderly

By Rebecca Turner

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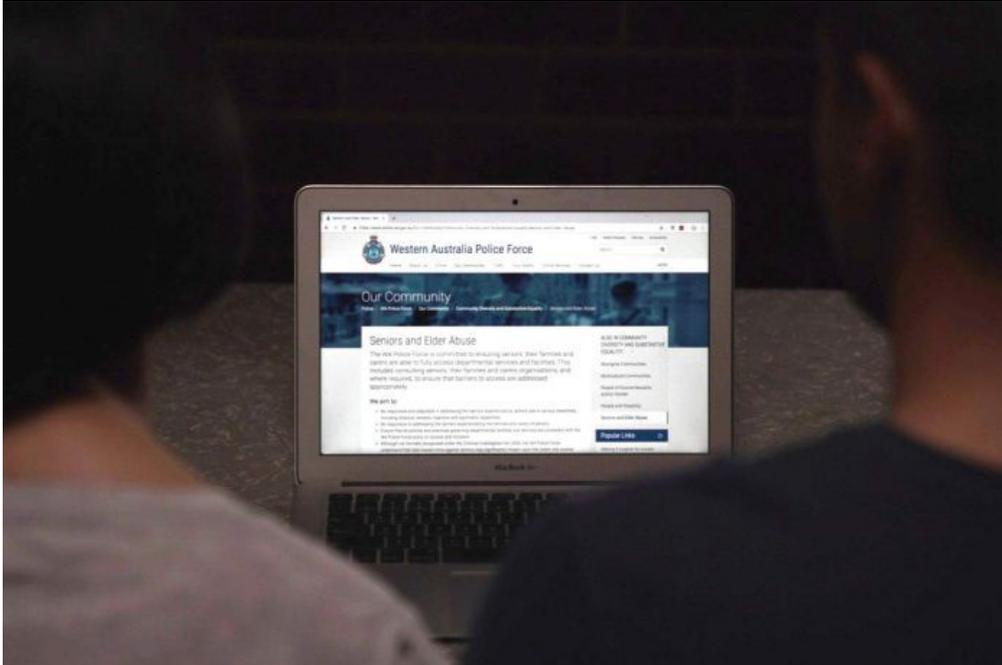


PHOTO: Enduring Power of Attorney forms have become a key tool in elder abuse within families. (ABC News: Hugh Sando)

Imagine you were handed a document which allowed you to take out as much money as you liked from someone's bank account, or let you sell their property.

In WA, this form is known as an unrestricted Enduring Power of Attorney, or EPA — and lawyers say it is a legal tool for children to rip off their elderly parents.

Or, as Perth couple Jasmine* and Gary* like to say, "giving the crooks the keys to the bank".

Earlier this year, a relative took advantage of the powers of an EPA to sell their elderly grandmother's properties, worth more than \$2 million, without her knowledge.

"It's like walking straight into the back of the bank and there's no security guard standing there," Gary said.

EPAs are legally binding agreements anyone can make with someone else, known as the donee, to give them the authority to make financial or property decisions on their, the donor's, behalf.

For many people, these are useful documents that allow them to appoint a trusted person to manage their financial affairs.

Key points:

- An EPA agreement allows one person to make financial decisions for someone else
 - Unrestricted EPAs can lead to the financial abuse of older family members
 - Advocates are calling for tougher legislation to tackle the problem
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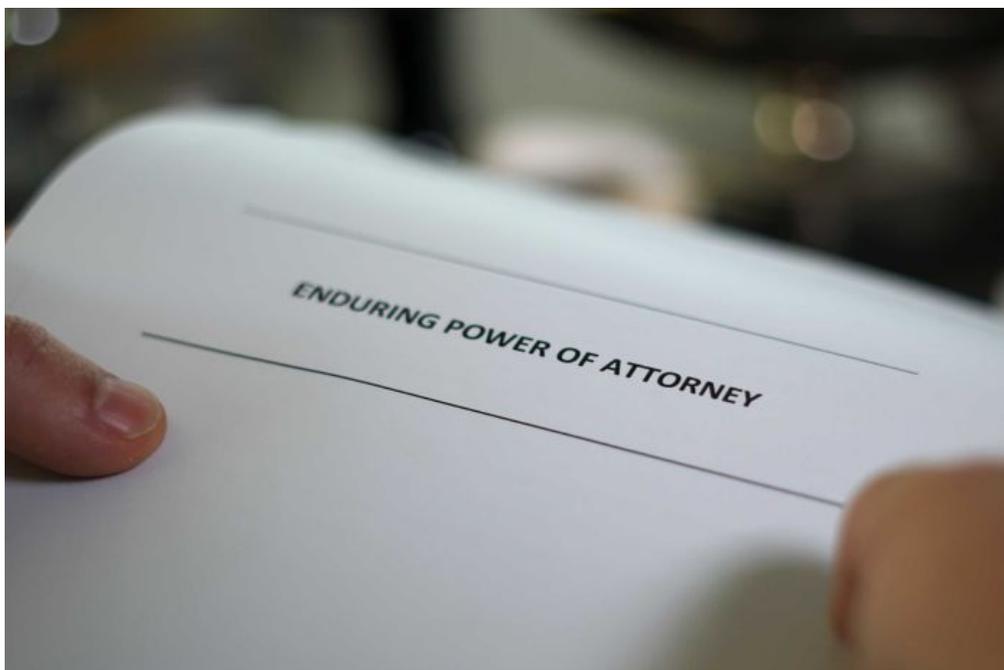


PHOTO: An Enduring Power of Attorney form gives someone the legally-binding authority to make decisions on your behalf. (ABC News: Jon Sambell)

With restricted EPAs — which become effective when a donor has lost the ability to make decisions — this person has legal responsibilities monitored by the government.

But the one signed by Jasmine and Gary's grandmother — known as an unrestricted EPA — is incredibly powerful because they become active the moment they are signed and no one regulates how the donee manages the donor's assets.

In WA, in particular, the rules around unrestricted EPAs are among the weakest in the country, leading to what a parliamentary committee investigating elder abuse has called "silent" exploitation.

It has called on the WA Government to overhaul the system, with stricter witnessing requirements, more penalties for the abuse of EPAs, and making donees sign a document showing they understand their responsibilities.

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'He's stabbed me in the back'

Jasmine and Gary said some of these changes could have helped their grandmother.

She was a traditional housewife who had left the household's money management to her husband and passed on her financial decision-making to her children via an EPA when she was widowed many years ago.

In her 90s, she was admitted to hospital after a fall, and within weeks one of her properties was put on the market without anyone knowing.

The only other person with this authority was her son.

Gary was surprised to discover one of her houses had been sold and another was on the market when he was searching land records.

Thinking she may have sold the first property to pay her aged care fees, he asked his grandmother about it the next day.

She had no idea of the property sale and became agitated.

After checking her bank accounts, Jasmine and Gary noticed some suspicious transactions.

Within just one fortnight, hundreds of thousands of dollars had bounced between the financially illiterate woman's many bank accounts.

Records show the money eventually ended up in the relative's bank account.

"As she had no knowledge of it and the size of the transactions, it was really concerning," Gary said.

"She said, 'I want to see a lawyer. He's stabbed me in the back'," Jasmine said.

Calls for stronger oversight

Witnessed by her bank manager and overseen by a lawyer, the elderly woman revoked her EPA, removing her son's powers over her.

But then she later signed another EPA restoring his authority over her finances, witnessed by a Justice of the Peace.

When questioned about the new EPA when she lodged it at her bank with her son, she told her bank manager:

"If you can't trust your son, who can you trust?"

She also signed a statutory declaration, saying the money from the first property sale was a gift to her son.



PHOTO: Elderly relatives suffer through unrestricted enduring power of attorney forms. (ABC News: Hugh Sando)

These documents have made it difficult for Jasmine and Gary to take further action, and they said the Fraud Squad had not been keen to investigate what they allege was theft.

They said there needed to be stronger oversight of EPAs, including restrictions on gifting and accountability for spending big sums of money.

For example, in New South Wales donees are not allowed to gift big sums of money or make transactions where they have a real, or perceived, conflict of interest.

"It is such a flimsy piece of paper easily obtained and signed," Jasmine said.

"The whole document could easily be forged. No one is cross-checking the credibility of the witnesses or the understanding of such a powerful form by the donor.

"There are currently zero security measures in place. Just print, sign and start stealing."

Police reluctant to investigate

For succession lawyer Morgan Solomon of Solomon Hollett Lawyers in Perth, Jasmine and Gary's story is a familiar one.

He said his small office received calls every week about EPAs being abused, including cases which could be investigated by police.



PHOTO: Succession lawyer Morgan Solomon has heard many stories of EPAs being abused. (ABC News: Jon Sambell)

"I have always maintained that once you move into the realm of transferring assets from someone, it's very, very dangerous and could well be criminal," he said.

"But there does seem to be reluctance by the Fraud Squad to really dig into these issues because they are family arguments."

Mr Solomon said the powers of unrestricted EPAs were too broad and needed better regulation.

"I can sign one of these now for you and, even though I have complete capacity, you can go and suck all the assets out of my estate and transfer them into your name and it's gone," he said.

"I've given you that power. It's illegal, of course, but it doesn't seem to stop people doing this."

Mr Solomon said he advised clients to not give this power away lightly and consider appointing at least two donees to tighten oversight of spending.

The WA Government has not made many firm commitments to implement the committee's recommendations around EPAs but was working with other states and territories to develop an national online register of EPAs.

* Names have been changed for legal reasons.