

Trustees cautioned on practical considerations with SMSF wills

by Miranda Brownlee, Deputy editor, SMSF Adviser

While SMSF wills can be a useful strategy for some clients, there are some important risks to consider with deed updates, a specialist law firm has warned.

Speaking at the SMSF Association National Conference, View Legal director Matthew Burgess said that while there are a few different versions of SMSF wills and they all adopt fairly different approaches, but the starting point with them all is to look at the trust deed.

Mr Burgess said anyone considering using an SMSF will first need to determine whether their deed provider actually allows them.

“If they do allow them, you need to get a deep understanding of how they actually describe the strategy,” he said.

Mr Burgess said in the right circumstances SMSF wills can potentially be a useful strategy as part of a holistic estate planning approach but there are some important practicalities to consider.

“The core advantage of an SMSF will is that by embedding it into the trust instrument, you’re narrowing down the risk that something’s going to get lost,” he said.

“By doing it that way, it [hopefully] means that someone has actually read the trust instrument because they’ve been very particular about weaving it into the trust instrument. In our experience, it narrows down the risk of something as critical as the superannuation entitlements just being lost in the mix.”

However, Mr Burgess warned any clients planning to use an SMSF will that is on an annual cycle of updating its deed would need to be very careful, as they may risk revoking what they’ve put in place.

“As long as you’re complying with the way the deed is to be updated, and embedding it into that trust instrument, it’s probably going to be fine,” he said.

“You may also forget all those general witnessing and dating requirements.”

Mr Burgess also noted that if clients are hardwiring into the trust deed document exactly where they want their entitlements to go, then SMSF professionals need to ensure that the entitlements are going to SIS dependants and tax dependants and there has been consideration around whether the death benefit nomination needs to be cascading.

“You also need to make sure that you’ve thought about a trigger event such as loss of capacity and set out very clearly what’s to happen in that chain of events,” he said.