

Legal trap flagged for SMSFs with child members

By Miranda Brownlee

Advisers and their clients have been warned on the importance of ensuring that children in an SMSF appoint an enduring power of attorney once they turn 18.

Speaking at the SMSF Association Technical Summit, View Legal director Matthew Burgess said with six member SMSFs now allowed, there may be more SMSF clients deciding to include younger children into their fund.

Mr Burgess said where SMSF clients do have children in their fund, its important they're aware that once these children turn 18 they will need to appoint an enduring power of attorney.

"While it probably won't be at the top of their to do list, [we need] to get that person's enduring power of attorney or indeed their entire estate planning arrangements sorted out," explained Mr Burgess.

"Once a child has turned 18 and maybe they have an event, the parents are no longer able to act. The parents, probably quite rightly, because it's been the right answer for 18 years in a row, have assumed that they continue to have authority and they don't need any extra documentation to create that authority. It's simply not the case though."

Mr Burgess explained that the moment an individual turns 18, assuming that they are otherwise capable, they must takes steps to appoint who they want as their legal authority and the only way to do that is through an enduring power of attorney.

"It may not be the most amazing birthday gift to be receiving as an 18 year old but if they're the member of an SMSF, you've got a material risk I'd say as the adviser if you're not effectively mandating that that documentation gets put in place basically immediately," he warned.

"There's an increasing number of horror stories relating to this issue. One example from the not too distant past was where an 18 year old went to the running of the bulls in Spain and got knocked over and spent months in a hospital there because of a political stach between the Australian embassy and the Spanish embassy people about whether there was any legal authority to the parents because an enduring power of attorney had not been appointed."

