

Variations in EPOA laws can cause an ‘administrative nightmare’

by Matthew Burgess, Director, View Legal

With every state having different laws and requirements regarding enduring power of attorneys, SMSF clients living on state borders may want to consider having two, says a specialist lawyer.

Speaking at the SMSF Association Technical Conference, View Legal director Matthew Burgess explained that not only does every state in Australia have different laws applying to enduring power of attorney documents, but the laws can often be substantially rewritten.

“How can a country our size have every single state requiring different enduring power of attorney documentation? It’s ridiculous and administratively difficult for all of us,” said Mr Burgess.

“In Queensland, we’ve seen the enduring power of attorney legislation completely rewritten twice in the space of 20 years.”

Mr Burgess noted that South Australia, for example, the provisions require the attorneys to sign before the donor.

“Then we’ve got the NSW jurisdiction, where the lawyers union is so powerful in Parliament that the only way to get a valid enduring power of attorney is if you’ve got a lawyer’s signature. So you can’t actually do it yourself — you’ve got to get a lawyer to sign off as a witness,” he said.

Given that the laws are different in every state, Mr Burgess said in the context of an SMSF, if a client is geographically close to two borders such as in Riverina, Tweed Heads or Coolangatta, it may be advisable for them to get an enduring power of attorney for both jurisdictions.

“Certainly if you’ve got property in two different jurisdictions then you should get separate EPOAs as well,” he said.

“The administrative nightmare of trying to convince the NSW titles office who is expecting five-page document that your Queensland 24-page document is legitimate will see you end up burning so much money, time and effort over that one issue.”

If the client also has offshore assets then this may also need to be considered in relation to the EPOA, he added.

