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## SMSF death wishes may not be fulfilled

Advisers must have a proper estate plan in place for each client assessed and approved by an estate planning specialist in order to make sure superannuation death benefit will be dealt with as the client has stipulated.

IOOF senior technical services manager Julie Steed told *financialobserver* that the essential problem with death benefits was that many people mistakenly believed they could put something in their will and their super would be dealt with accordingly.

“It’s absolutely essential that people understand fully the workings of their self-managed super fund [SMSF],” Steed said.

“Far too often, we see confusion between what superannuation law allows versus what the trust documentation actually says.

“Disastrous consequences can occur, not only in terms of unintended distribution of wealth, but by imposing unnecessary stress and expense on those left behind.”

A recent IOOF webinar looked at three cases where unexpected outcomes resulted from people not understanding how their SMSF would work after their deaths, including cases where funds went to beneficiaries the deceased had expressly stipulated they wanted excluded.

Steed said a common problem was surviving spouses also being trustees of the SMSF. They could use this status to appoint new trustees, effectively over-riding existing binding death benefit nominations and appointment of the deceased’s children as the legal personal representative (LPR).

“The role of the LPR is different to that of trustee of the SMSF,” Steed said.

“Even though superannuation law allows an LPR to be appointed as trustee of the fund, it doesn’t necessarily follow that that’s what the trust deed will in fact require.

“The LPR does not automatically become trustee.”

Many people were unaware that the SMSF trust deed might require the surviving trustee to appoint a new trustee, Steed said.

In these instances, the LPR might never be appointed and therefore might not be involved in making decisions regarding the payment of the death benefit.