



WHEN NOT TO DRAFT A WILL:

Understanding Mental Competence and Legal Consequences

At **Evergreen Will & Estate Solutions**, we often emphasize the importance of having your affairs in order by drafting a valid Will. A Will ensures that your wishes are respected, your loved ones are provided for, and unnecessary conflict is avoided. But just as important as knowing *when* to draft a Will, is understanding *when not to*.

A Will is only valid if the person drafting it - known as the **Testator** or **Testatrix** - is legally competent at the time of signing. Sadly, situations arise where individuals suffering from conditions such as **Dementia, Alzheimer's disease, or other cognitive impairments** attempt to draft or amend their Wills. This can have serious consequences.

What does "competence" mean in law?

Under South African law, a person must be of **sound mind** and fully understand the nature and consequences of their actions in order to draft a valid Will. This means:

- They must **understand what a will is** and what it does.
- They must **grasp the extent of their estate** (property, finances, belongings).
- They must **recognize the impact** of their decisions - for example, who will inherit and who will be excluded.



If these conditions are not met, the Will can later be challenged in court and declared **invalid**.

When should you *not* draft a Will?

You should not draft or amend a will if:

- You are no longer capable of making rational and informed decisions due to **mental illness or cognitive decline**.
- You are under **severe influence, manipulation or coercion** from another person.
- You are unaware of the **nature or value of your assets**.

Attempting to draft a Will under these circumstances creates a **high risk of dispute** among family members.

The legal consequences of an Incompetent Will

If it can be proven that a person was not competent when drafting their Will, the document may be:

- **Declared invalid by the court** - meaning it is treated as though it never existed.
- Replaced by a **previous Will** (if one exists).
- If no earlier valid Will exists, the estate will be distributed according to the **Intestate Succession Act**, which sets out who inherits by default.

This can lead to **serious family conflict** and even financial exploitation, especially in cases where vulnerable individuals were influenced by others.

How families can take advantage

Sadly, it is not uncommon for families or caregivers to pressure a person with declining mental capacity into drafting or changing their Will in their favor. Examples include:

- **Isolating the testator** and preventing them from receiving objective advice.
- **Rushing** a new Will during a period of confusion.
- **Withholding care or medication** as leverage.



WHEN NOT TO DRAFT A WILL:

Understanding Mental Competence and Legal Consequences

This is why it is so important to ensure that Wills are drafted **while you are still fully competent**, and ideally with the guidance of a professional.

Protecting yourself and your loved ones

The best way to avoid risks is to:

- **Draft your Will early** - don't wait until health issues arise.
- **Review your will regularly** (once a year or after major life events).
- **Seek professional assistance** to ensure the document meets all legal requirements.
- **Communicate your wishes** to your family, so they understand your decisions.

Final thought

A Will is one of the most important legal documents you will ever sign. But for it to be valid and enforceable, you must be of sound mind when drafting it. Waiting too long, especially in the face of illness like Dementia or Alzheimer's, can mean your final wishes are ignored - leaving your estate in dispute and your loved ones divided.

Evergreen Will & Estate Solutions will guide you through the process with care and professionalism, ensuring that your wishes are clearly expressed while you are fully competent to do so.

Contact us today - don't wait until it's too late!

