

Rational mindset required when drafting a will



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Most people only consider making or amending a will when there has been some emotional event such as the death of someone close, a family fallout and almost invariably, when a breakup such as divorce is looming.

Unfortunately an emotional mindset may lead to irrational decision-making but the reality is that very often it is only when an emotional event occurs that people are prompted to attend to their affairs. It is for this reason that

the testator should seek unemotional professional advice in the making of the will. Possibly the worst thing to do is to draft the will yourself since your executor may find it difficult or impossible to execute. This article explains how this may be the case.

Although there is freedom of testation under South African law, this "freedom" is not absolute and has definitive limitations. The drafting of a will is deceptively complex, no matter how simple your affairs may seem and hence the need to consult with an expert. In many instances these limitations are overlooked, the consequences of which could be dire when it comes to your executor having to administer the estate. Indeed, the ultimate distribution or what is left for distribution may be entirely different to what was intended in terms of the will.

Factors to consider would include:

- The effect of divorce or annulment of a marriage on the will. In terms of the Wills Act, you have a three month window following a divorce to amend your will to nominate alternative beneficiaries instead of your former spouse, failing which the former "spouse" will inherit.
- In similar vein, there may be obligations in terms of a divorce settlement which may provide for the delivery of certain assets at some future date. A divorce settlement invariably takes precedence over a will, so this needs to be borne in mind when drafting a will.

Ante-nuptial contract – this contract also takes precedence over the will. In many instances one may find that