What are the requirements for a valid will if I cannot sign my name?

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A will is a specialised document, a document which should reflect your wishes as to the distribution of your assets after your death. Your will should preferably be drawn up by an expert like an attorney who specialises in the administration of deceased estates in accordance with the Wills Act, 7 of 1953.

Therefore, if you are 16 years and over and not mentally incapable of appreciating the consequence of your action, you are quite competent to make a will. I often consult with clients and one of the biggest misconceptions is that the size of their estate does not justify making a will. If you own a vehicle (no matter the value) or have a registered bank account in your name (no matter the balance) you need a will. So much more if you own a fixed property.

Should you be unable to sign your will due to a physical impairment, the South African Law stipulates that you may ask someone to sign the will on your behalf or you can sign the will by the making of a mark. A mark could be a thumbprint or perhaps the making of a cross.

Should someone sign on your behalf or you sign by making of a mark, the requirements for a valid will are as follows:

• Since 1 January 1954 all wills must be in writing. It can be written by hand, typed or printed. Remember that if your will is handwritten, the person who wrote the will is not allowed to be mentioned as a beneficiary in your will or receive any other benefits from your will (for example be the executor).
• You must sign the will at the end thereof by the making of a mark or the will must be signed by some other person in your presence and by the direction of yourself.
• The mark or the signature of the other person signing on behalf of yourself must be made in the presence of two or more competent witnesses (all persons of 14 years and over and who at the time of witnessing the will are not incompetent to give evidence in a court of law) and a commissioner of oaths.
• The witnesses must attest and sign the will in the presence of yourself and of each other and if the will is signed by the other person, also in the presence of such other person and a commissioner of oaths.
• If the will consists of more than one page, each page other than the page on which it ends must be signed by yourself or by such other person anywhere on the page. Keep in mind that you have to sign all the pages of the will, it is only the last page of the will (where the will ends) that needs to be signed at the end of the will.
• A commissioner of oaths must certify that he/she satisfied himself/herself as to your identity and that the will so signed is indeed your will.
• The commissioner of oaths furthermore must sign and attach his/her certificate and he/she must also sign each page of the will, anywhere on the page.\

A beneficiary to your will should not sign as a witness, because he/she will then be disqualified from receiving any benefit from your will. There are however some exceptions to

this rule. The same applies to the spouse of such beneficiary.

Amendments to a will must comply with the same requirements for a valid will and if you cannot write, with the same requirements as listed above.

If you die without leaving a will, your estate will devolve according to the Intestate Succession Act 81 of 1987.