

# Understanding “Per Stirpes” and “Per Capita” in Your Will

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Whenever I review drafts of a will with a client, there are certain terms that almost always trigger questions. One of those is “per stirpes.”

Per stirpes is a Latin term meaning “by branch.” It describes how assets are distributed if a beneficiary dies before the person making the will. For example, if I leave a bequest to Person A and A dies before me, who inherits A’s share?

I have several options. I could name a specific alternate beneficiary, say Person B. I could also decide that A’s share should lapse and instead be distributed among those who receive the residuary (the remaining balance) of my estate. Or, I could direct that A’s share go to A’s descendants. That’s where per stirpes comes into play.

A per stirpes designation means that A’s share passes down to A’s children. If A has two children, C and D, they would step into A’s shoes and split A’s share equally. This approach ensures that the heirs of a deceased beneficiary receive what their parent would have inherited.

Another option is a per capita distribution. Like per stirpes, per capita is a Latin term—meaning “by the head” or “by representation.” But it works differently. Instead of each branch of the family receiving an equal portion of the inheritance, per capita divides the inheritance equally among

all living descendants in the nearest generation, as well as the descendants of any deceased beneficiaries in that generation.

Let's look at an example. Say I have four children—A, B, C, and D. A and B survive me, but C and D pass away before I do. C had two children, E and F. D had one child, G. If I choose per capita distribution, my estate is first divided into equal shares for each of my living children and for my deceased children who left descendants. That means A and B each receive a quarter share. The remaining half (C's and D's combined shares) is then split equally among E, F, and G, giving them each a one-sixth share.

A per stirpes designation, on the other hand, would work differently. A and B would still each receive a quarter share. However, instead of the remaining half being split evenly among E, F, and G, it would be divided by branch—meaning E and F would split C's quarter share (receiving one-eighth each), and G would inherit all of D's quarter share. See the table below for a visual presentation of these examples.

This distinction becomes particularly important when children don't have the same number of children. A per stirpes distribution ensures that each branch of the family receives the same share, while per capita ensures that every individual grandchild receives an equal amount, regardless of how many siblings they have.

When discussing estate planning with clients, I always ask how they want to handle distributions if one of their children predeceases them. Do they want their grandchildren to inherit their parent's share as a unit, or do they want all grandchildren to be treated equally? Most clients prefer per stirpes, as it allows for a natural equitable distribution within the family, ensuring that a deceased child's heirs inherit what their parent would have received. However, a minority of clients opt for per capita to ensure equal

treatment among grandchildren.

Understanding the difference between per stirpes and per capita is crucial for making informed estate planning decisions. The choice ultimately depends on whether a client regards fairness among branches of the family or fairness among individual heirs. By considering these options carefully, clients can ensure their estate plan aligns with their intentions and values.

### **Per Stirpes**

A (25%)	B (25%)	C		D
		E (12.5%)	F (12.5%)	G (25%)

### **Per Capita**

A (25%)	B (25%)	C		D
		E (16.7%)	F (16.7%)	G (16.7%)

*Do you have a suggestion for a future article topic for Attorney Walecka? Reach out to him directly with a question or topic you think would be helpful to readers.*

*The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.*