

PLANNING FOR YOUR FUTURE

Per stirpes, per capita. What's your pleasure?

By Bernard A. Krooks, Certified Elder Law Attorney

You might have seen the terms per stirpes and per capita in your will or trust and wondered what those terms mean. Many of you might skim over these clauses since they are just "boilerplate." To those of you who do: caveat emptor. Your will may not say what you think it says.

Typically, clients want their wills to provide for the distribution of their assets to specific beneficiaries, such as children. It is not unusual for a client to request equal distribution of property among all of his or her children. Many times, however, a client has not considered the possibility of a child predeceasing him or her and leaving behind one or more children (that is, grandchildren of the client). In that event, how should the client's property be distributed?

When a bequest is to be divided among several beneficiaries, let us assume those beneficiaries are your children, the distribution can be made per stirpes or per capita (the distribution may also be made by representation, which we will not discuss in this article).

If all your children are alive when you pass away, each of these three distribution methods will provide your children with an equal share of your bequest, as we will see in the following examples. However, if one or more of your children predecease you, leaving their own children (your grandchildren), then the distribution of your bequest will be substantially different depending upon whether the bequest is made per stirpes or per capita.

The following explanations should help you understand the differences between per stirpes and per capita (assume in each situation that you have four children: A, B, C and D):

Per stirpes: A distribution per stirpes means that the distribution will be by right of a deceased ancestor.

For example, if the bequest is made per stirpes and you have four children (A, B, C and D) the bequest would be divided into four equal shares and each child would receive 25% of your bequest. If one of your children predeceased you (let us say Child A), leaving two surviving children, A1 and A2, then A1 and A2 would divide the 25% share that their deceased parent, A, would have received. A1 and A2, your grandchildren, would each receive 12 ½ % of the bequest. If a second child (let us say Child C) also predeceased you leaving one surviving child, C1, then C1 would receive the entire 25% share his or her parent, C, would have received. Your two surviving children, B and D, would each receive 25% of the bequest.

Per capita: A distribution per capita means that all the surviving beneficiaries receive an equal share of the bequest.

If a bequest is made to your four children (A, B, C and D) per capita, and assuming all four children survive you, the bequest would be divided into four equal shares and each child would receive 25% of the bequest. If, however, as in the last example, one of your four children, A, predeceased you, leaving two surviving children, A1 and A2, and a second child, C, also predeceased you, leaving one surviving child, C1, then the per capita designation of the bequest would affect all the beneficiaries. In this example, there are two surviving children, B and D, and three surviving grandchildren,

A1, A2 and C1, making a total of five beneficiaries. In per capita distribution, all beneficiaries would share equally. Therefore, the bequest would be divided into five equal shares and each beneficiary would receive 20% of the bequest.

In summary:

- If you desire that a deceased child's share pass to his or her children, then the property should pass per stirpes.
- If you desire that all beneficiaries share equally, without regard to whether they are children or grandchildren, then the bequest should be per capita.
- Finally, if you have specific wishes that do not conform to any of the methods explained in this article, then you can provide for a bequest with the terms and conditions you desire, that is, distribution of your bequest can be custom-tailored.

Confused yet? You're not alone. That's why it is so important to sit down with your attorney and make sure you understand your estate planning documents; even the boilerplate language.

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