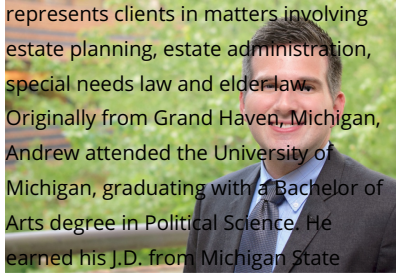


# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



Andrew is a member of the firm's Trust and Estates practice area. He primarily represents clients in matters involving estate planning, estate administration, special needs law and elder law. Originally from Grand Haven, Michigan, Andrew attended the University of Michigan, graduating with a Bachelor of Arts degree in Political Science. He earned his J.D. from Michigan State University College of Law.

## Understanding the Difference Between a 'Per Stirpes' and 'Per Capita' Distribution

November 18, 2020 | by

When it comes to your estate plan, there are a lot of decisions you'll have to make. Arguably, one of the most important decisions involves identifying to whom, and how, you want assets to pass when you die. Whether you create a revocable living trust, a last will, and testament, or both, you will need to name one or more loved ones or beneficiaries who will receive distributions. Thoughtful and deliberate estate planning also contemplates what happens to a beneficiary's share if you outlive him or her.

In some cases, these decisions are relatively simple. For example, you are a parent of one, and you want to leave 100 percent of your assets to this one child, and you only have one grandchild who will inherit your assets in the event your only child does not survive you – in this scenario, your distribution wishes are relatively straightforward.

For situations where there are multiple beneficiaries at the same level (such as children, grandchildren, siblings, nieces, and nephews, etc.), you'll need to consider whether you prefer "per stirpes" or "per capita" distribution.

### Per Stirpes

Per stirpes means that assets are divided equally by each branch of the family when there were surviving descendants in that branch. For example, let's say Ann has three children: Adam, Barbara, and Chris. Ann decides to leave her estate "to her descendants, per stirpes."

If all three of her children survive her, each child inherits one-third (1/3) of Ann's estate.

If Adam and Barbara survive Ann, but Chris as a beneficiary predeceases Ann, it is necessary to determine whether Chris had any descendants who survived Ann. If he did not leave descendants, then Adam and Barbara as living members, would each inherit one-half (1/2) of Ann's estate.

Let's take that same scenario but this time, Chris did have two children who survived Ann (Daniel and Elizabeth.) The children will inherit the share of the estate set aside for

their deceased parent. Under a per stirpes distribution plan, this is how Ann's estate would pass:

- 1/3 to Adam
- 1/3 to Barbara
- 1/6 to Daniel
- 1/6 to Elizabeth

Per stirpes is sometimes called "by right of representation" because the descendants of a deceased heir will inherit that heir's share.

### **Per Capita**

In contrast, per capita means assets pass equally to the heirs who are living at the time of the death of the testator at the level stated. Let's use the same example we reviewed above.

If Ann's estate was left "to my descendants, per capita" and she only had three children and no grandchildren, then her estate would be distributed 1/3 to each child. However, if Ann's two grandchildren, Daniel and Elizabeth, were alive when Ann died, the distribution would change significantly to the following:

- 1/5 to Adam
- 1/5 to Barbara
- 1/5 to Chris
- 1/5 to Daniel
- 1/5 to Elizabeth

Furthermore, if one of Ann's children predeceases her and Ann's estate planning documents state "to my children, per capita," it is not necessary to determine whether Ann's deceased child left any descendants who survived Ann. Under per capita distribution, assets are divided equally among the beneficiaries alive at the level stated in the estate planning documents. So, if Ann has two surviving children, Adam and Barbara, each of them inherits equal shares of Ann's estate regardless of whether or not Chris left descendants who survived Ann.

There is no "right" or "wrong" distribution plan. For some people, *per stirpes* best reflects their wishes. In other cases, people choose *per capita* distribution. It's important to understand the difference so you can make sure your trust and will reference the strategy that best aligns with your goals and wishes.

Choosing beneficiary designations can be a confusing process, particularly if you have multiple descendants that you want to account for. This is why it is always best to consult with an experienced [estate planning attorney](#) who can ensure that your final wishes are carried out in a way that you would want.

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