

# BOTTA ANGELI, L.L.C.

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## WHAT'S THE DIFFERENCE BETWEEN *PER STIRPES* AND *PER CAPITA* DISTRIBUTIONS?

### BY REPRESENTATION VS. BY INDIVIDUAL

When it comes to estate planning terms, two that you'll need to be familiar with are “**per stirpes**” and “**per capita**.” These are Latin terms that are commonly used in Last Will and Testaments and Revocable Living Trusts to describe how your property is to be left to your beneficiaries.

#### PER STIRPES

”Per stirpes” means taking “by representation” or “by class.” In the estate planning context, this means that if the beneficiaries are to share in a distribution “per stirpes,” then the living member in the class of beneficiaries who is closest in relationship to the person making the distribution will receive an equal share. However, if a member in the class of beneficiaries who is closest in relationship to the person making the distribution is deceased and survived by any descendants, then that deceased beneficiary’s descendants will take “by representation” what their deceased parent would have taken.

The easiest way to explain the concept is by a few examples. Let’s assume the following:

- You have three children, Ann, Bart and Carl
- Ann has two children, Drew and Eve
- Bart, Carl, Drew and Eve all have no descendants

If your Last Will and Testament or Revocable Living Trust states that your property is to be distributed to your “then living descendants, per stirpes,” here’s what happens in different scenarios:

- Assume that Ann, Bart, Carl, Drew and Eve have all survived you:
  - Ann, Bart and Carl will each receive a 1/3 share
  - Drew and Eve will receive nothing
- Assume that Ann has predeceased you and Bart, Carl, Drew and Eve have all survived you:
  - Bart and Carl will each receive a 1/3 share

-Drew and Eve will each receive a 1/6 share; they take by representation and in equal shares what Ann would have taken:  $1/3$  divided by  $2 = 1/6$  each

- Assume that Ann, Carl, Drew and Eve have all survived you and Bart has predeceased you:

-Ann and Carl will each receive a 1/2 share; a share won't be created for Bart since he has predeceased you and wasn't survived by any descendants

-Drew and Eve will receive nothing

- Assume that Ann and Drew have predeceased you and Bart, Carl and Eve have all survived you:

-Bart and Carl will each receive a 1/3 share

-Eve will receive a 1/3 share; she takes by representation what Ann would have taken and there's no need to create a share for Drew since he has predeceased you and wasn't survived by any descendants

“Per stirpes” is used in estate planning to cover all of the bases in the typical family situation so that you don't have to run to see your estate planning attorney each time a child or other beneficiary predeceases you. If you don't want this typical pattern as part of your estate plan to begin with, then you'll need to make your intentions very clear to your attorney. On the other hand, if a child or other beneficiary predeceases you and you no longer want this typical pattern to apply, then you'll have to change your plan. This is where annual estate planning updates come in handy.

### **PER CAPITA**

Contrast “per stirpes” to “per capita,” which means taking “by total head count” or “by total number of individuals.” In the estate planning context, this means that if the beneficiaries are to share in a distribution “per capita,” then all of the living members of the identified group will receive an equal share. However, if a member of the identified group is deceased, then a share won't be created for the deceased member and all of the shares of the other members will be increased accordingly.

As with explaining "per stirpes," the easiest way to understand the concept is by a few examples. If the same facts as described above are assumed and your Last Will and Testament or Revocable Living Trust states that your property is to be distributed to your “then living descendants, per capita,” here's what happens in the same scenarios described above:

- Assume that Ann, Bart, Carl, Drew and Eve have all survived you:

-Ann, Bart, Carl, Drew and Eve will each receive a 1/5 share

- Assume that Ann has predeceased you and Bart, Carl, Drew and Eve have all survived you:
  - Bart, Carl, Drew and Eve will each receive a 1/4 share
- Assume that Ann, Carl, Drew and Eve have all survived you and Bart has predeceased you:
  - Ann, Carl, Drew and Eve will each receive a 1/4 share
- Assume that Ann and Drew have predeceased you and Bart, Carl and Eve have all survived you:
  - Bart, Carl and Eve will each receive a 1/3 share

“Per stirpes” is used more commonly in estate planning than “per capita” because it covers the typical family situation. If you prefer to use a “per capita” distribution, then you’ll need to make sure that your estate plan addresses any generation skipping shares that may be created by this type of distribution. In other words, leaving direct shares to grandchildren and great grandchildren through a per capita or other type of direct distribution while your children have also survived you will trigger the generation skipping transfer tax on the grandchildren's and great grandchildren's shares. You’ll need to work very closely with your estate planning attorney to insure that your estate avoids this extra and costly tax.

**For Additional Information, please contact:**

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