



# Make Sure Your Property Is Distributed the Way You Want if One of Your Children Dies Before You

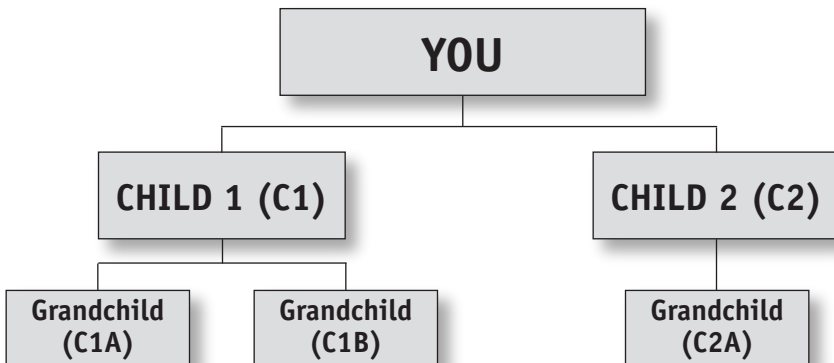
RANDY GARDNER (Leawood, KS) and LEWIS W. DYMOND (Frisco, CO)

If you do not have a will, your state's intestate laws will determine who receives your property. If you have a will or trust, you determine who will receive your property. Among the legal phrases that appear in state intestate laws and wills and trusts are the terms “per stirpes” and “per capita.” These terms significantly affect the way your property is distributed, particularly if one of your children dies before you and leaves children.



Per stirpes, which from the Latin means “by the roots,” allows lineal descendants to inherit property their parents would have received. Per stirpes is sometimes referred to as “by right of representation.” Per capita, which from the Latin means “by the head,” requires surviving heirs to receive an equal share of the property. The distinction between per stirpes and per capita is best understood with an example.

**EXAMPLE:** Assume you are unmarried and have two children. Child One (C1) has two children (C1A and C1B). Child Two (C2) has one child (C2A).



**SCENARIO 1:** If you die survived by your children, C1 and C2 will share equally in your property under either per stirpes or per capita language, unless you include a different distribution arrangement in your will or trust.

**SCENARIO 2:** If C1 dies before you, who inherits your property if you die without a will? If you live in a state following traditional “per stirpes” rules of descent, C2 receives  $\frac{1}{2}$  of your property and C1A and C1B split C1’s  $\frac{1}{2}$  interest. C1A and C1B each receive  $\frac{1}{4}$ . If both C1 and C2 die before you, then C1A and C1B take the property their parent, C1, would have received. C2A takes C2’s share. In other words, C1A and C1B each receive  $\frac{1}{4}$ , and C2A receives  $\frac{1}{2}$ .

Many think this unequal distribution at the grandchild level is not desirable. Consequently, many states have adopted a hybrid of per stirpes called “per capita at each generation per stirpes.”

**SCENARIO 3:** Continuing the facts of our example, if C1 dies before you, C2 receives  $\frac{1}{2}$  of your property and C1A and C1B split C1’s  $\frac{1}{2}$  interest. C1A and C1B each receive  $\frac{1}{4}$  (the per stirpes outcome from Scenario 2 above). If both C1 and C2 die before you, then C1A, C1B, and C2A share the property equally ( $\frac{1}{3}$  each) (the per capita outcome from Scenario 1 above).

None of these approaches is intrinsically good or bad or right or wrong. What matters is whether the distribution pattern produces the result you want.

### Distribution Approach Followed in Each State’s Intestate Statute

STATES FOLLOWING THE TRADITIONAL PER STIRPES APPROACH (SCENARIO 2)	STATES FOLLOWING THE PER CAPITA AT EACH GENERATION PER STIRPES APPROACH (SCENARIO 3)	
CONNECTICUT DELAWARE FLORIDA GEORGIA ILLINOIS IOWA KANSAS KENTUCKY LOUISIANA MARYLAND MINNESOTA MISSISSIPPI NEVADA NORTH DAKOTA SOUTH DAKOTA VERMONT WISCONSIN WYOMING	ALABAMA ALASKA ARIZONA ARKANSAS CALIFORNIA COLORADO HAWAII IDAHO INDIANA MAINE MASSACHUSETTS MICHIGAN MISSOURI MONTANA NEBRASKA NEW HAMPSHIRE NEW JERSEY	NEW MEXICO NEW YORK NORTH CAROLINA OHIO OKLAHOMA OREGON PENNSYLVANIA RHODE ISLAND SOUTH CAROLINA TENNESSEE TEXAS UTAH VIRGINIA WASHINGTON WASHINGTON, D.C. WEST VIRGINIA

## **OVERRIDING YOUR STATE'S DISTRIBUTION APPROACH WITH A WILL OR TRUST**

If the distribution pattern applicable in your state does not reflect your wishes, you can override it in your will or trust. For example, if you want a per capita distribution similar to Scenario 1, you would include language similar to the following in your will or trust.

*If my spouse does not survive me, I give the residue of my estate to my descendants, per capita.*

If you want a traditional per stirpes distribution similar to Scenario 2, you would include language similar to the following in your will or trust.

*If my spouse does not survive me, I give the residue of my estate to my descendants, per stirpes.*

If you want a per capita at each generation per stirpes distribution similar to Scenario 3, you would include language similar to the following in your will or trust.

*If my spouse does not survive me, I give the residue of my estate to my descendants, per capita at each generation per stirpes.*

**What you should do:** Check your state's intestate statute to see which distribution approach your state has adopted. If you have a will or trust, check the language contained in the document to see which approach was used. Think about the approach you feel is fair, and perhaps discuss it with your family. Be sure your estate planning documents reflect your wishes.

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*Randy Gardner, JD, LL.M, MBA, CPA, CFP® is the Director of Education for WealthCounsel, LLC and also a Professor of Tax and Financial Planning and Director of the Certificate in Financial Planning Program at the University of Missouri – Kansas City.*

*Lewis W. Dymond is president and founder of Dymond Consulting, Inc. located in Frisco, Colorado, a WealthDocs™ consulting, auditing, and customized drafting solution for wealth planning professionals.*