



# Wills and Estate Briefing





# Disclaimer

- The briefer is NOT your attorney.
- No attorney-client relationship exists
- No confidentiality exists in the briefing room.
- If you have questions, you can meet with an attorney at the end. Fill out a will worksheet to receive assistance.



**DISCLAIMER**



## What We Will Discuss

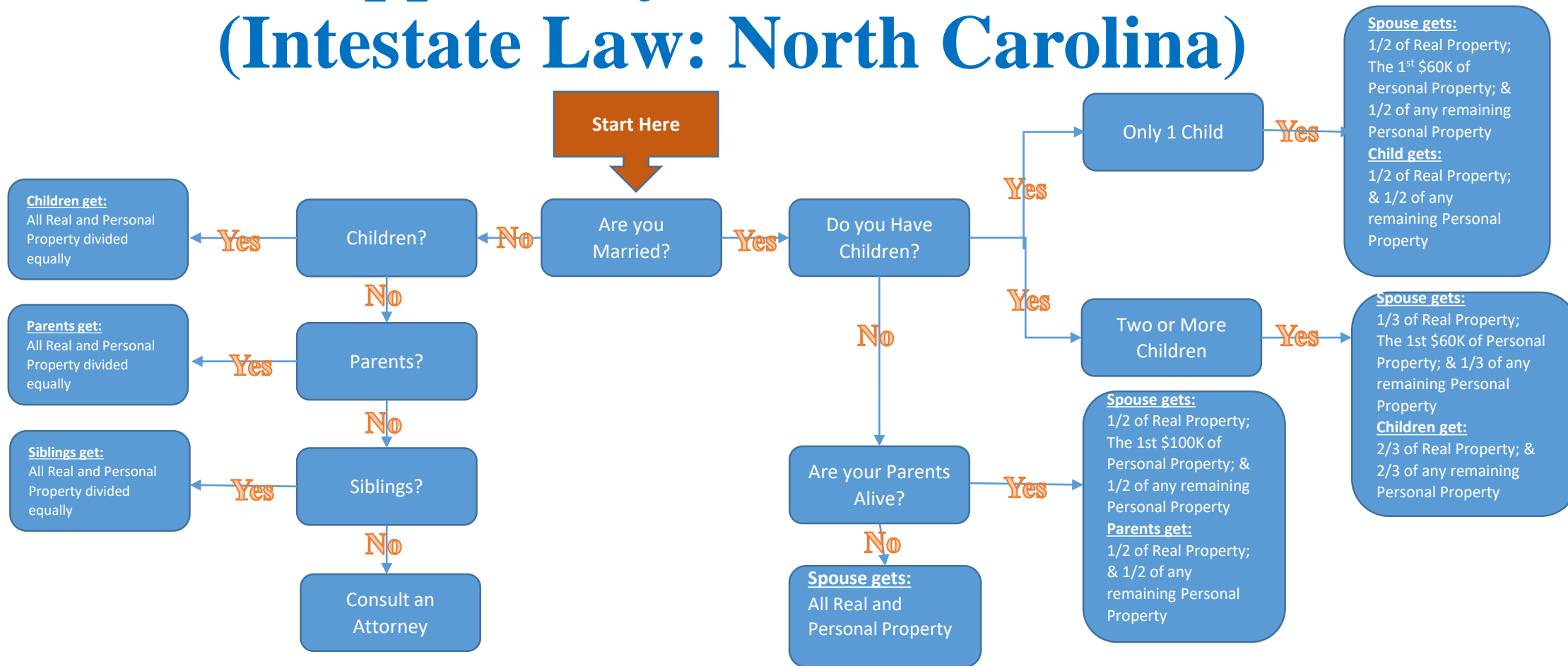


- Dying without a Will (Intestate)
- The Probate Estate and Non-Probate
- Trusts vs. Custodial Accounts
- Personal Representative / Executor
- Per stirpes v. per capita
- Storing your will
- Living Will & Health Care Power of Attorney



# What Happens if you Die without a Will?

## (Intestate Law: North Carolina)



Individuals that pass away without a valid will are said to have died “intestate” and their property will be divided amongst surviving relatives according to the terms of the North Carolina Intestate Statutes as depicted above. If you want your assets to be divided in a different manner you will need to execute a valid will.

\*Please note that the flowchart listed above has been generalized and the details of your particular situation may trigger an exception to the general rules listed above.



# What Happens if you Die with a Will?

## The PROBATE Estate

- **The probate estate** is composed of all the assets a person owns at his or her death that are subject **to probate** administration.
- **Probate** administration is the process of proving to a **probate** court that the will is genuine.
- **PROBATE**=What passes through the Will







# The PROBATE Estate



First Step: YOUR Will



1. Real Property  
(Real Estate)



2. Personal and Tangible Property



3. Residuary Property  
(intangible property....  
and everything left)



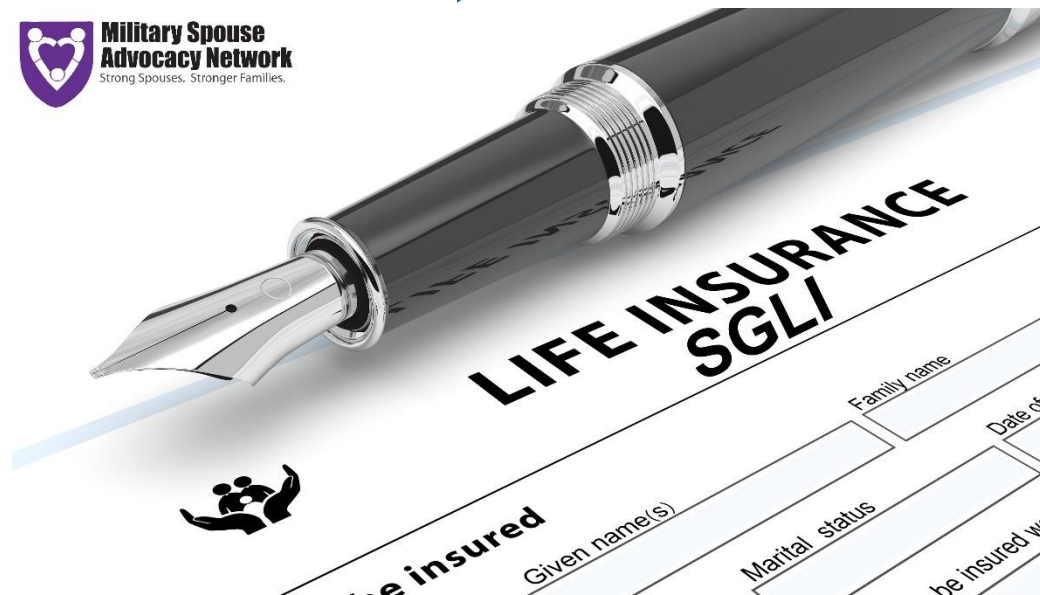
# What is **NOT** part of the Probate Estate???

## (Passes outside of the Will)

**Not** everything you own will automatically go through probate. Assets that generally do not go through probate are...



1. Jointly owned assets that transfer to the surviving owner;
2. Assets that **have** a valid beneficiary designation
3. Assets that are held in a trust.



**Service-member's Group Life Insurance**  
**Assigned Beneficiary (Passes outside of Probate)**

\*Some Exceptions Apply to All THREE



# Trusts and Custodial Accounts

## What's the Difference???







# Leaving Money to a Minor (Someone **YOUNGER THAN** 18 Years Old)

- Legally, a person under 18 cannot access their inheritance.
- You need to set up a way to store the inheritance if both parents die before the children turn 18.
- The two main options are
  1. A Trust
  2. Custodial Account





## A Trust

- An **account** that allows a trustee you select to manage assets on behalf of your child.

### Pros

- Gives you flexibility: to set the age and conditions on when children get money.
- Money in trust is not counted as income of the child until they actually get it, so it won't negatively affect things like college financial aid.

### Cons

- More expensive and complicated
- Less money will go to kids because of the fees
- **SADDLE** the **Trustee** with **Fiduciary Duties**

FIDUCI - WHAT?

A **Fiduciary Duty** is the **obligation** or trust imposed by law on officials of an organization making them liable for the proper use and disbursement of the organization's money, funds and property.



## A Custodial Account

- Basically a savings' account for a minor until they come of age.

### Pros

- Relatively simple to set up
- Relatively cheap to set up, so more money will go to kids
- NO Trustee=NO Fiduciary Duties
- Can withdraw before the age of Majority pending account guidance (Emergency)

### Cons

- Everything goes to child as soon as they become of age.
- Counts as income for the child, which might affect things like college financial aid





# Personal Representative/Executor

Who are they? What do they do?



.... Of your ESTATE





## Personal Representative/Executor

- **Person IN CHARGE** of making sure your will is followed.

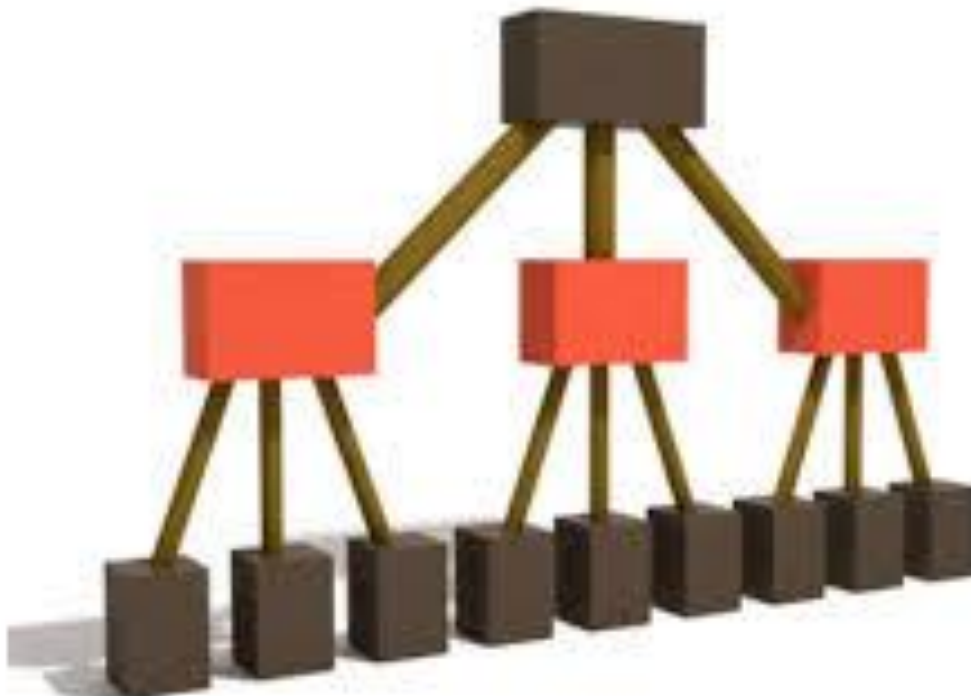
### Responsibilities:

- File will with court after your death
- Distribute property from will
- Pay your debts and taxes after death
- Pick someone you trust!!!!
- Consider leaving a **Letter of Instruction** (to accompany the Will)
  - This will help guide the Executor of your wishes





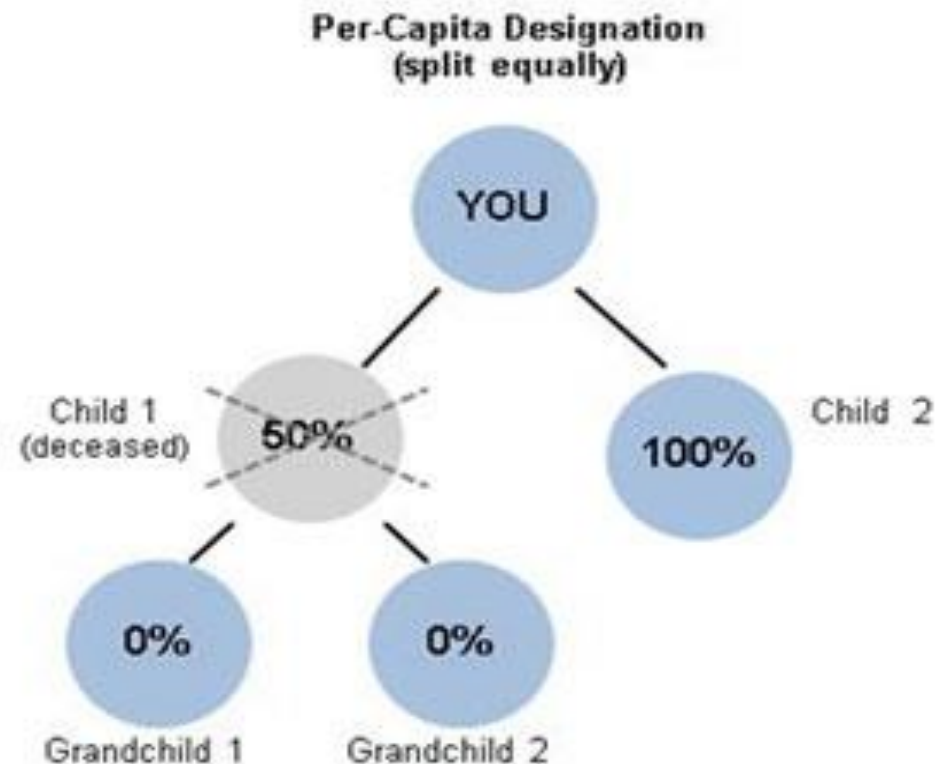
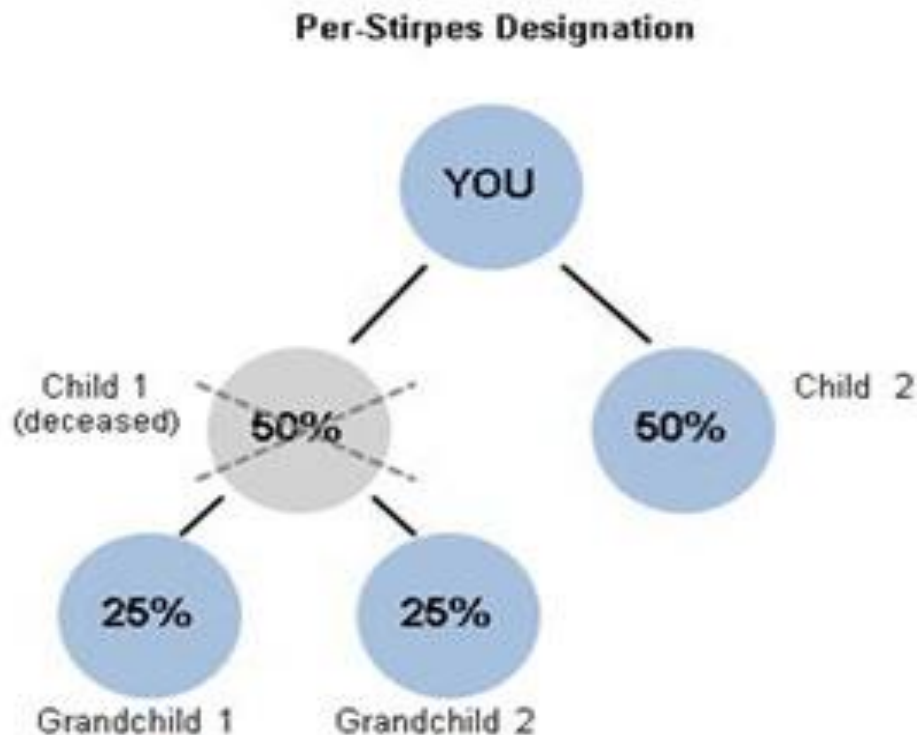
# Per Stirpes vs. Per Capita





## Per Stirpes vs. Per Capita

- Both are ways to determine where your stuff goes if your children pass away before you do, but your grandkids survive.
- You will be asked to choose between the “**two**” options when completing your will.





# Storing the Will

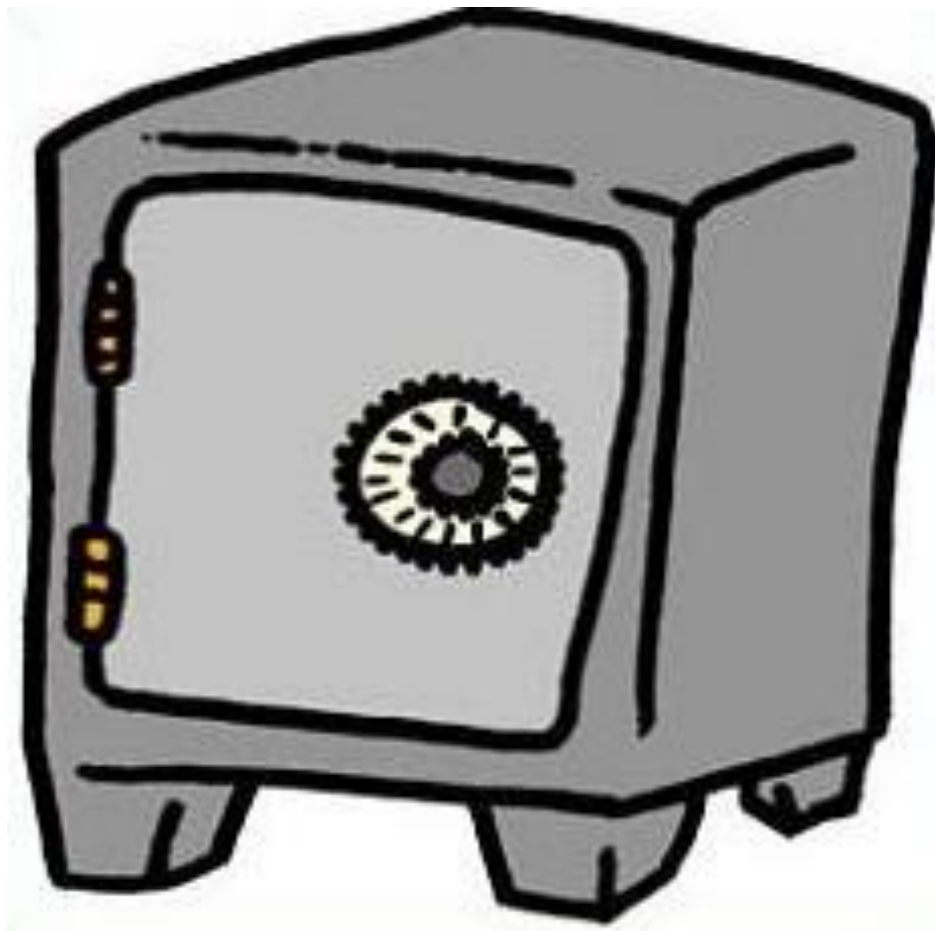






## Storing the Will

- We DO NOT keep a copy of your will
- Keep it in a safe place: sealed envelope, filing cabinet, etc.
- Do NOT put it in a safe / lock box *unless* others also have the combination
- You may go to your local court to file it before you die
- Whatever you do, tell your loved ones!





# POWER of ATTORNEY

## THE FOUR MOST COMMON POWERS OF ATTORNEY

AND WHEN YOU NEED THEM

*A power of attorney enables you to give someone else the ability to do something for you if you cannot do that action for yourself because you are either incapacitated or not available.*



# POWER of ATTORNEY

## GENERAL POWER OF ATTORNEY

Gives someone the authority to do *anything* you would be able to do for yourself. Not accepted by all institutions, so best to also execute a special power of attorney if possible.





# POWER of ATTORNEY

## SPECIAL POWER OF ATTORNEY

Gives someone the authority to do a specific thing for you, such as accessing bank accounts, maintaining real estate, paying bills, and maintaining a vehicle.





# POWER of ATTORNEY

## HEALTH CARE POWER OF ATTORNEY

Gives someone the authority to make health care decisions for you if you are incapacitated, including admission to and discharge from hospitals, accessing health care records, consenting to surgical procedures, and picking up prescription medication.



# POWER of ATTORNEY

ADVANCE  
HEALTH CARE  
DIRECTIVE  
("LIVING  
WILL")

Expresses your desires regarding end of life care (such as artificial hydration and nutrition, and life support) if you are in a vegetative state or other serious medical condition from which you won't recover.



# Thanks for all your time and Consideration



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