



CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series

Cyber Center of Excellence Office of the Staff Judge Advocate
Legal Assistance Division, Fort Gordon

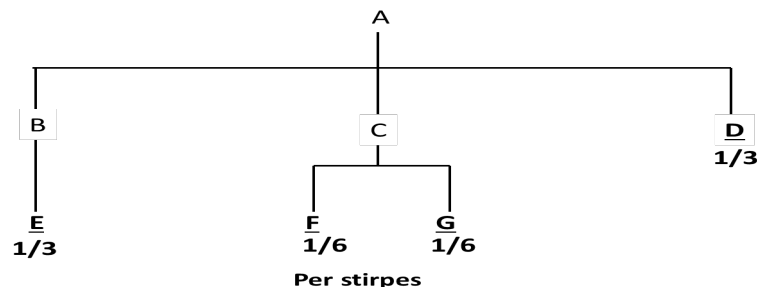


This Information Paper from the Fort Gordon Legal Assistance Division contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney.

Estate Planning – De-Mystifying the meaning of “Per Stirpes” and “Per Capita” in Georgia

When deciding how to distribute your belongings and assets after you die, it is helpful to know the difference between “Per Stirpes” and “Per Capita.” The two phrases describe the way your property can be distributed if a beneficiary in your will dies before you and you are unable to update your will.

“Per Stirpes” is a phrase many people choose to use to include their grandchildren into their will if something happens to their children. “Per Stirpes” means your assets are distributed “by the roots” – that each share will be passed down a generational line. The chart below illustrates “Per Stirpes” distribution. For example, if you have three children to whom you are leaving equal shares of your estate (labeled as “B”, “C”, and “D” in the chart below), each child is granted a 1/3 share. If child C dies before you but has two children (labeled as “F” and “G”), each of those two grandchildren would get 1/2 of child

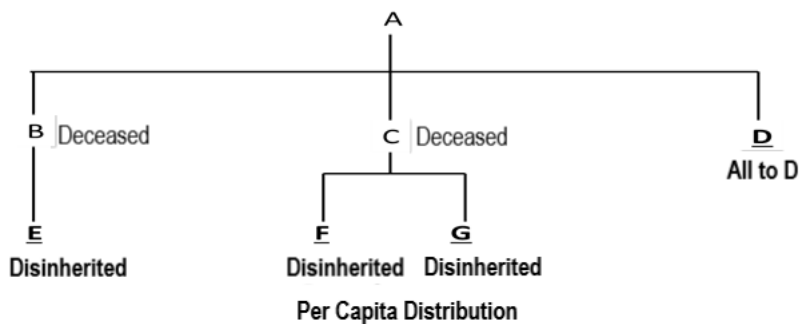


The survivors are **E, F, and G**; all others are deceased.

C’s 1/3 share, which would be 1/6 share of your estate to each. Similarly, if child B dies before you but has a child named “E”, your grandchild E would get B’s entire 1/3 share. Grandchild E gets the entirety of child B’s 1/3 share, because grandchild E has no brothers or sisters with whom to split the 1/3 share. “Per Stirpes” is the default method of distribution in Georgia. So, if your will fails to specifically include what you want to happen if one of your children dies before you, the “Per Stirpes” method will be applied.

As an alternative to the “Per Stirpes” method of distribution, in Georgia, “Per Capita” is another way of indicating your intent for the distribution of your estate if a named beneficiary in your will dies before you and you are unable to update your will. “Per Capita” means you want your estate shared only between the people named in your will who survive you. For example, if you want only the survivors of B, C and D to inherit, your will can provide that the estate is to go to B, C, and D, per capita. “Per Capita” means your assets are distributed according to the survivors among the named beneficiaries. The chart below illustrates a “Per Capita” distribution. If you have three children to whom you are leaving equal shares of your estate (named “B”, “C”, and “D”), each child is granted a 1/3 share. If one of those children were to die before you, their share of the estate would be redistributed to the other named beneficiaries. The children of the deceased child would effectively be disinherited under the will. If both B and C predecease you, D will inherit the whole 100% of your estate. Remember, Per Capita is not the default method in Georgia, so you must specifically include the words “Per Capita” or other language in your will designating that if a beneficiary predeceased you their children or grandchildren are not to inherit if you want that method of distribution to occur.

Per capita example



The survivors are **D**; all others are deceased.

The examples of “Per Stirpes” and “Per Capita” in this information paper are based on Georgia law. Each state may interpret the phrases differently. If your will is being prepared for a state other than Georgia, be sure to speak with a Legal Assistance Attorney before relying on information in this paper or elsewhere to elect a distribution method for your property.

Additional Information

For additional information, the Fort Gordon Legal Assistance Office is located at 267 Heritage Park Lane, Building 35202, Fort Gordon, Georgia. You may reach the office by calling (706) 791-7812 / 7813. Please be advised you must have an appointment to consult with one of the attorneys; however, paralegals are available during hours of operation to answer general questions and notarize documents.