

Estate Planning Red Flag - Failing to Properly Plan for Beneficiaries Predeceasing You

When people think about estate planning, they often focus on how their assets will be distributed after their death — but few consider what happens if a child or other beneficiary dies before they do. While it's difficult to imagine such a scenario, planning for this possibility is essential to ensure that your estate is distributed according to your wishes. Without clear instructions, your assets may be redirected by default inheritance laws, potentially leading to unintended outcomes or family disputes.

An effective estate plan anticipates contingencies like a predeceased heir. For example, you may want your child's share to pass directly to their children (your grandchildren) or instead be divided among your remaining beneficiaries.

These details can be specified in your will or trust through two common distribution designations: per capita (which means “by the head”) or per stirpes (which means “by the branch”). If your documents don't address this situation, the distribution could be determined by state law, which may not reflect your intentions.

Let's suppose that Joan has three children: Anna, Bennet and Cristine. Anna has three children and Bennet and Cristine each have one child. If Joan leaves her assets to her children per capita, then they'll be divided equally among them. If Anna predeceases Joan, then her assets will be divided equally between Bennet and Cristine, effectively disinheriting Anna's three children. Had Joan left her assets to her children per stirpes, then Anna's children would have split her one-third share.

Another distribution method is by representation, under which all members of the same class or generation are treated equally. This method works similarly to per stirpes unless more than one child predeceases you.

Going back to the previous example, suppose that both Anna and Bennet predecease Joan. If her assets are distributed by representation, then Cristine would receive one-third, while Anna and Bennet's children would split the remaining assets four ways. Under the per stirpes method, Cristine would receive one-third, Bennet's child would receive one-third and Anna's children would split the remaining third three ways.