

Yes – “Stirpes” is a Word

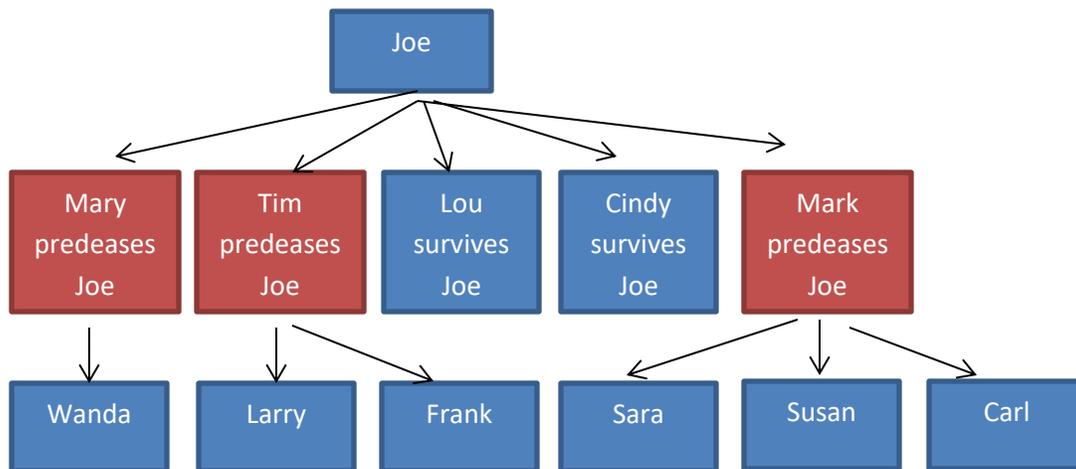
In estate planning, lawyers sometimes use archaic legal terms. At times, these legal words are unnecessary and can create confusion. At other times, they are the best way of clearly expressing the client’s objectives. One of the phrases that often makes clients feel disconnected from the estate planning process is the term “per stirpes.”

Per stirpes is a term that is used to explain how assets are divided among future generations, if the persons who are named beneficiaries have predeceased the person leaving the gift. It is best understood by contrasting it with the other option: right of representation.

For instance, let’s say Joe has five children and leaves his estate to them in equal shares, but Joe lives to a ripe old age and three of his five children die before he does. Let’s also assume that of those three children, one has just one child, one has two children and the third has three children. Then the question becomes: do each of those six grandchildren receive an equal amount? Or do they each take the share of their parent, meaning one grandchild would get a fifth of the estate, two grandchildren would each get a tenth, and three grandchildren would each get a fifteenth?

Under per stirpes, the grandchildren would get unequal shares. Under right to representation, each would get an equal share.

A diagram might help:



Lou and Cindy each get 1/5 under either scenario.

Per stirpes would give Wanda Mary's $\frac{1}{5}$ share; Larry and Frank would share Tim's $\frac{1}{5}$ so they would each get $\frac{1}{10}$, and Sara, Susan and Carl divide Mark's $\frac{1}{5}$ and each get $\frac{1}{15}$. Right of representation would give all of the grandchildren the same amount: $\frac{1}{10}$ (which is $\frac{3}{5}$ divided equally among the six grandchildren).

Right of representation is sometimes referred to as equal at each generation. Per stirpes is about each grandchild having only an interest in their parent's share. Per stirpes or right of representation would only make a difference if more than one child dies, and then only if those children have a differing number of descendants of their own. But it comes up, and therefore, it is important to be clear on this point. Good estate planning is, in part, about anticipating possibilities. It's a good topic for you and your lawyer to discuss. The same rules apply to both wills and trusts. If your document doesn't say, Michigan law assumes right of representation.