LeBlanc & Young

Memorandum

TO: LeBlanc & Young Clients

DATE: January 2019

SUBJECT: Per Capita vs. Per Stirpes

There are two different approaches to dividing an inheritance for the benefit of the descendants of a deceased beneficiary. A division "per stirpes" focuses on the share of the inheritance that would have passed to the deceased beneficiary; whereas a division "per capita" divides the inheritance equally among recipients in the same generation level. The differences can be illustrated most clearly by an example:

Mother has three children: Adam, Mary and John. She has six grandchildren. Three are children of Adam; two are children of Mary; and one is the child of John. Mother's estate planning documents leave her entire estate to her surviving descendants, either per stirpes or per capita.

SCENARIO 1: If all three children predecease mother, but all six grandchildren survive her, then:

1.   Distribution per stirpes requires the inheritance to be divided into three equal shares: one such share to be distributed equally among the three children of Adam; one such share to be distributed equally between the two children of Mary; and the other such share to pass entirely to John's only child.

2.   Distribution per capita would pass in six equal shares, one such share for each surviving grandchild.

SCENARIO 2: If Mary and John predecease Mother, but Adam and the six grandchildren survive her, then:

1.   Distribution per stirpes requires the inheritance to be divided into three equal shares: one such share to be distributed to Adam; one such share to be distributed equally among the two children of Mary; and the other such share to be distributed to the one child of John.

2.   Distribution per capita will yield a 1/3 share for Adam, the surviving child; and the remaining 2/3 will be distributed in three equal shares among Mary's two children and John's one child.

If you have any questions about the differences between a distribution per capita versus per stirpes, please contact any of the attorneys at our firm for additional discussion and explanation.