

**75-2-106 Definitions -- Per capita at each generation -- Terms in governing instruments.**

- (1) As used in this section:
  - (a) "Deceased descendant," "deceased parent," or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under Section 75-2-104.
  - (b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under Section 75-2-104.
- (2)
  - (a) If, under Subsection 75-2-103(1)(a), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are:
    - (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants; and
    - (ii) deceased descendants in the same generation who left surviving descendants, if any.
  - (b) Each surviving descendant in the nearest generation is allocated one share.
  - (c) The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.
- (3)
  - (a) If, under Subsection 75-2-103(1)(c) or (d), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are:
    - (i) surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and
    - (ii) deceased descendants in the same generation who left surviving descendants, if any.
  - (b) Each surviving descendant in the nearest generation is allocated one share.
  - (c) The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.
- (4)
  - (a) If, under Subsection 75-2-103(1)(e), a decedent's intestate estate or a part of the estate passes "per capita at each generation" to the descendants of the decedent's deceased spouse, the estate or part of the estate is divided into as many equal shares as there are:
    - (i) surviving descendants in the generation nearest the deceased spouse that contains one or more surviving descendants; and
    - (ii) deceased descendants in the same generation who left surviving descendants, if any.
  - (b) Each surviving descendant in the nearest generation is allocated one share.
  - (c) The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.
- (5) Any reference to this section found in a governing instrument for the definitions of "per capita," "per stirpes," "by representation," "share and share alike," "to the survivor of them," or "by right of representation" shall be considered a reference to Section 75-2-709.

Amended by Chapter 350, 2011 General Session

