Title to the real property does not pass under the will to the true beneficiaries. Instead it passes to the trustee and the trustee must deliver a deed to the beneficiaries. If, however, the client does not want the fiduciary to have the power to sell real property, the client can achieve a direct transfer of title by specifically devising real property to the true beneficiaries.

The executor and beneficiaries lose the protections of probate court supervision. But the protections are not free. The expense explains, in part, the prevalence of revocable trusts.

I find that clients who see how the testamentary trust can reduce estate administration expenses tend to like it, despite the disadvantages. So I propose the plan to clients in situations where the client does not need or declines a revocable trust.

When drafting a pour-over-to-a-testamentary-trust will, I rely on the BB&T Estate Planning Forms Manual, using the Manual’s “Simple Will for a Married Person with Minor Children” (or “Will Form No. 2” in Part 2 of the Manual, beginning on page 3-25 of the 2016 edition). This form will qualify the estate for summary administration if the client is married and wishes to leave everything to the spouse. The form leaves the residuary estate to a testamentary trust (for the testator’s children) if the client survives his or her spouse. I change the form to:

1. Give the tangible personal property to the testamentary trust if the client survives his or her spouse (in Article I, Paragraph A of the form);
2. Remove the spouse as a beneficiary of the probate estate (in Article I, Paragraphs A and B of the form) if the client is unmarried or does not wish to leave everything to his or her spouse;
3. Rewrite the terms of the testamentary trust (Article II of the form) to distribute the assets, including the tangible personal property, to the true beneficiaries; and
4. Require the trustee to pay the estate’s liabilities.

As far as I can tell, the approach described above is not used much. There may be pitfalls I have not discovered yet. I hope that members of the Section will provide guidance and feedback.

Walton Davis is a solo practitioner in Black Mountain.

---

**Pro Bono Corner**

By David Silver

The NCBA’s 4ALL Statewide Service Day is a program that, for one day each year, gets attorneys to answer phone calls from the general public to answer their legal questions at no charge. The next 4ALL is scheduled for Friday, March 2, 2018. This program has existed for 10 years, and I have participated every year that it has been in Greenville. Here, the attorneys gather in a phone bank at a local television station. A 1-800 number is advertised on that TV station all day, and the station will occasionally show the lawyers answering phone calls, just like a telethon. The volunteer attorneys work the phones for one of four three-hour shifts.

The three-hour shift goes very quickly, and my ear is normally burning by the end of my shift as a result of the phone being pressed against it for almost the entire time. I would guess that I take about 35 calls during my shift, with the vast majority of the calls being related to Elder Law, Estate Planning and Estate Administration. If there is a question about a topic that I am not comfortable discussing (like criminal law), then I pass the phone to a lawyer who practices in that area, and if another attorney gets a questions related to Elder Law, they will frequently pass the phone to me. I find myself switching seats every few minutes, which is preferable to having phone cords wrapped around everyone’s neck.

The volunteer attorneys are not allowed to identify themselves to the callers, so this is not something to be done to try to drum up business. However, there aren’t exactly a lot of potential paying clients calling in - the phone calls are about what you would expect from a free legal service. Many of the calls are about things that we discuss everyday (Medicaid eligibility, estate administration), but from people who might not otherwise seek our advice (the people who are calling do not claim to have much in the way of assets). This represents a significant percentage of the calls received, and therefore I feel that it is particularly important that there is an Elder Law attorney present and available to help with these kinds of calls. Some of the calls are from people who have had random legal issues lingering in their minds for years but haven’t had the money to obtain a legal opinion (one guy kept talking about a claim that came about from before I was born). Some of the calls are just ridiculous, and these stories get shared among the lawyers whenever there is a lull in the phone calls. However, I have never had any caller be anything other than thankful, no matter if I was able to provide useful advice or had to tell them that their claim had no legal basis.

When my kids are grown and I have my practice running smoothly, I hope to be more involved in some larger pro bono efforts that reach numerous people in need. Unfortunately, I don’t have the luxury of dedicating that much time to these types of projects at this time of my life, so my pro bono activities are currently limited to helping individual clients. However, I can easily set aside three-hours once a year to answer legal questions over the phone, and this allows me to reach out to people outside of my individual sphere. I would encourage other Elder Law attorneys to consider participating in the next 4ALL Service Day.