



SHEPPARD LAW FIRM

RECORDING RESIDENTIAL PROPERTY INTO TRUST

Balancing Legal Protection, Practical Risk,
and Estate Planning Outcomes



SHEPPARD LAW FIRM
ATTORNEYS AT LAW

OVERVIEW

Introduction

For many clients, signing their estate planning documents feels like the finish line. In truth, it is only the beginning. The effectiveness of any estate plan depends on whether assets are properly aligned with that plan—and for many families, an important asset is their residence.

Transferring a residence into a revocable trust, or into a Florida Community Property Opt-In Trust, is one of the most critical steps in ensuring that the plan works as intended. Yet this step is often delayed—not because clients hesitate, but because the process involves third parties who may not respond.

Our office provides our clients with notice letters to send to lenders, homeowners' associations (HOAs), and insurance carriers. These letters are designed to confirm that:

- the transfer is administrative in nature,
- the property will continue to be used as a residence, and
- all obligations tied to the property will remain unchanged.

Despite this, it is very common for lenders and HOAs to simply not respond. This is not necessarily a sign of objection. In many cases, it reflects a more practical reality: **these institutions often lack the internal resources or procedures to review and respond to routine estate planning transfers that do not affect their economic position.**

This leaves clients with a signed deed ready to record—and a decision to make.

Why “Residence” Matters

The protection described above depends on one central fact: the property must remain a **residence**. This applies broadly—not just to Florida homestead property, but to any property used as a residence by the borrower.

If the property continues to be occupied and used as a residence, the federal protection is intact.

LEGAL FRAMEWORK

Federal Protection for Residential Transfers

Most mortgages include a **due-on-sale clause**, which gives the lender the right to demand full repayment if the property is transferred.

If that were the end of the analysis, transferring property into a trust would be risky.

However, federal law changes that result.

The **Garn–St. Germain Depository Institutions Act of 1982** was enacted, in part, to prevent lenders from interfering with ordinary estate planning transactions. Under this law, lenders are **prohibited from enforcing a due-on-sale clause** in certain circumstances, including transfers of residential property into a trust.

The protection applies when:

- the transfer is into a **revocable (inter vivos) trust**,
- the borrower remains a **beneficiary of the trust**, and
- there is **no change in the use or occupancy** of the property.

In practical terms, this means that a homeowner can transfer their residence into their trust without giving the lender a valid basis to call the loan—so long as nothing about the real-world use of the property changes.

This is not a technical workaround. It reflects a clear federal policy:

Estate planning transfers of residential property should not trigger loan acceleration when the borrower remains in place and the loan remains performing.

If the property is converted into a rental or investment property, the analysis changes. In that case, the lender's contractual rights may become more relevant, and the federal limitation may no longer apply in the same way.

For that reason, any decision to proceed without lender consent must be grounded in a clear and accurate understanding that the property's use has not changed—and will not change as part of the transfer.

Florida Homestead Considerations: What Does Not Change

For Florida residents, an additional concern is whether transferring a residence into a trust affects homestead protections. This is an important question, and fortunately, the answer is generally reassuring.

When structured properly, transferring a residence into a revocable trust **does not disturb Florida homestead status**.

That means:

Creditor Protection Continues

Florida's constitutional homestead protection—one of the strongest in the country—generally remains in place when the settlor retains the beneficial interest and the property continues to serve as a primary residence.

Ad Valorem Tax Exemption Continues

The homestead property tax exemption is not lost solely because title is held in a revocable trust, provided the beneficial ownership and residency requirements are satisfied.



Save Our Homes Cap Continues

The annual limitation on increases in assessed value (the Save Our Homes cap) is likewise preserved when the transfer is properly structured and the property remains the owner's residence.

*When done correctly, the transfer changes the **form of ownership**, not the substance of ownership. The homeowner remains, in every meaningful sense, the owner and occupant of the property.*

The Role of Notice Letters — and Why Silence Is Common

We often provide you letters to notify:

The HOA advising that:

- the ownership is changing to a trust,
- the property will continue to be used as a residence, and
- all governing documents will continue to be followed.

The insurance carrier when asked to:

- add the trust as an insured, as required, and
- ensure that coverage continues without interruption.

These communications are important, but they are often met with silence.

Non-response should not automatically be interpreted as disapproval. There are practical reasons why silence is common:

- lenders process high volumes of loans and prioritize payment performance,
- HOAs are not always structured to respond to routine ownership restructuring, and
- neither is typically staffed to evaluate routine trust transfers that do not affect their financial position.

The legal protections remain intact regardless of whether a response is received.

Non-response should not automatically be interpreted as disapproval.



The Real Decision: Competing Risks

Once the deed is signed and ready, the decision becomes unavoidable: proceed with recording, or wait.

IF THE DEED IS RECORDED

There is a theoretical possibility that a lender could notice the transfer and question whether it implicates the due-on-sale clause.

However, where the loan is current, the borrower remains in place, and the property continues to be used as a residence, that risk is **both low in practice and limited by federal law**.

It should be noted that there are costs involved even if the lender is incorrect in calling the loan. Litigation counsel may have to be hired, or at a minimum, our firm may have to spend time in attempts to convince the lender to reverse their action.

IF THE DEED IS NOT RECORDED

The consequences of delay are more direct. If the property is not transferred into the trust:

- It remains outside the estate plan,
- probate may be required at death, and
- the intended structure may fail when it is needed most.

As your funding letter explains, failing to properly align assets creates a **significant likelihood of probate** and undermines the effectiveness of the plan.

Where a Community Property Trust is involved, the failure to record may also result in the loss of a **full step-up in income tax basis**, which can carry substantial financial consequences.

Insurance: The Most Immediate Practical Concern

Among all third-party considerations, insurance is often the most important to resolve. If the trust is not properly reflected on the policy, coverage questions can arise, claims handling may be complicated, and avoidable disputes may occur.

For that reason, confirming proper insurance alignment is a key part of completing the process responsibly. You should ensure that the trust is a named insured on any liability policy, including umbrella policies.

Our Perspective

Every decision involves some degree of uncertainty. The relevant question is how that uncertainty compares to the known consequences of inaction.

On one side:

- **a lower-probability, legally constrained lender**

On the other:

- **a well-established risk of probate, administrative burden, and lost tax benefits**

When the property remains a residence and the legal conditions are satisfied, the balance often favors completing the transfer.

Client Confirmation

Before proceeding without responses from a lender or HOA, we ask you, as our client to confirm:

- that you understand the nature of the lender-related risk,
- that you understand the consequences of not recording, and
- that the property remains a residence and has not been converted to rental or investment use.

This ensures that the decision is made deliberately, with a clear understanding of both the legal protections and the practical considerations.



Conclusion

The transfer of residential property into trust is one of the most important steps in making an estate plan effective. Federal law was designed to allow that step to occur without disruption from lenders when the borrower remains in place and the property remains a residence.

When lenders or HOAs do not respond, the issue is rarely legal—it is often operational. The decision that follows is not about eliminating risk, but about choosing the more manageable one.

In many cases, moving forward with recording is not only reasonable—it is essential to preserve the very protections and benefits the estate plan was designed to achieve.

ASK CRAIG - INSTANTLY.

Still have questions about recording your property into trust?

Get answers from an AI trained on Craig's decades of Florida estate planning experience, available at any time, day or night.



Visit www.askcraighersch.com to get started.

Please note: Responses from askcraighersch.com do not constitute legal advice.



About The Sheppard Law Firm

Established in 1924, Sheppard Law Firm has a century-long history of providing legal services to Florida residents and consulting with local counsel for clients around the country.

For 100 years, we have dedicated ourselves to delivering peace of mind and clear guidance through tailored legal strategies that meet our clients' unique objectives and needs. Our team includes multiple Florida Bar Board-Certified Attorneys in Wills, Trusts, and Estates.

We use cutting-edge research, thorough analysis, and the latest technology to stay updated with ongoing legal developments. Sheppard Law Firm remains committed to offering personalized legal advice in Estate Planning, Probate and Trust Administration, Asset Protection, and Real Estate Law, ensuring our clients receive the highest standard of legal expertise.



Craig R. Hersch

Craig R. Hersch is a Florida Bar Board Certified Wills, Trusts & Estates attorney and a Certified Public Accountant, a dual background that places him among a small group of professionals with deep expertise in both legal and tax planning. He is one of fewer than 300 attorneys in the State of Florida to hold board certification in Wills, Trusts & Estates, a distinction that reflects demonstrated excellence, substantial experience, and peer recognition in this highly specialized area of law.

Craig is the Senior Partner of The Sheppard Law Firm, a boutique estate planning and tax law firm with a history spanning more than 100 years. While the firm's legacy is longstanding, its focus is firmly forward-looking—helping families navigate the legal, tax, and human realities of wealth transfer with clarity, precision, and foresight. His practice centers on advanced estate planning, trust design, fiduciary structuring, and long-term family legacy planning for successful individuals and multigenerational families.

Craig serves on the Editorial Advisory Committee for Trusts & Estates magazine, the premier national publication for trust and estate professionals. He is the author of eight books on estate planning, trustee responsibility, and wealth transfer, including *Perpetual Wealth*, an Amazon best seller. He has also written numerous professional articles and white papers addressing complex planning issues in a practical, real-world context.

A frequent and respected educator, Craig has been a featured continuing education lecturer for the Florida Bar, the Florida Institute of Certified Public Accountants (FICPA), WealthCounsel, and a wide range of national tax and estate planning conferences. He is known for delivering substantive content that bridges theory and practice, drawing on decades of experience working with families, fiduciaries, and professional advisors.

Craig also hosts the *Perpetual Wealth* podcast, where he explores estate planning, tax strategy, fiduciary responsibility, and the often-overlooked human side of wealth and legacy. He has been a guest on numerous other professional podcasts and platforms, sharing insights on estate planning trends, trustee issues, and the long-term consequences of planning decisions.

At the core of Craig's work is a belief that estate planning is not about documents alone, but about responsibility, continuity, and relationships. Whether advising clients, teaching professionals, or speaking to audiences nationwide, he brings a steady, experience-driven perspective shaped by both professional rigor and real-world fiduciary experience.

FROM OUR CLIENTS

"My wife and I engaged the Sheppard Law Firm last year to establish our trust after reading Craig Hersch's book on Florida Residency & Estate Planning...We now feel secure that **we have a law firm that we can turn** to as our estate matures, and that **we weren't just "one time" clients**. We highly recommend the firm!"

Randall W. | Sarasota, FL ★★★★★



Michael B. Hill

As a partner of Sheppard Law Firm and a board-certified specialist in Wills, Trusts, and Estates, Michael is committed to redefining estate planning for families in southwest Florida. With over two decades of legal expertise, he, along with his partners, have distinguished their practice through a blend of exceptional legal acumen and deep personal empathy. They are proud to be among the few practices to boast multiple board-certified attorneys in their specialized field within Florida.

Having experienced the challenges of inadequate estate planning within his own family, Michael brings a deeply personal understanding to his practice, ensuring that every client receives thoughtful, meticulous planning tailored to their unique needs. Their innovative approach extends beyond drafting documents to fostering enduring relationships through their Client Care Program, ensuring plans remain effective as life changes.

A former trumpet player and dedicated runner, Michael infuses his passion for education and personal engagement into every aspect of their practice. He believes in empowering his clients through understanding, allowing them to make informed decisions that secure their legacies and protect their loved ones.

Connect with him to explore how thoughtful estate planning can bring peace of mind and secure your family's future.

FROM OUR CLIENTS

Attorney Michael Hill at the Sheppard Law firm is **exceptionally professional and knowledgeable**. Mike takes the time to **explain things in simple terms** and is **always up to date** on the very latest regarding Estate Planning. We've trusted for years now that we are with the best professional Estate Planning Team in the area who have met and will meet all our and our family's Estate Planning needs.

E. K. | Fort Myers, FL ★★★★★



Hayley E. Donaldson

Hayley E. Donaldson is a partner of the Sheppard Law Firm and a Florida Bar Board-Certified Wills, Trusts & Estates Attorney. Florida Bar Board Certification is a distinction only awarded to the few attorneys who can demonstrate profound proficiency and competence in this complex field, as well as unwavering ethics and professionalism.

After the passing of a loved one, Hayley guides family members in the trust administration and probate process. Additionally she assists clients with their tax and estate planning, drafting simple and complex wills, trusts, and related estate planning documents.

Graduating first in her class, Hayley received her Juris Doctor from the University of Florida Levin College of Law. In law school, she was a member of the Florida Law Review and Volunteer Income Tax Assistance (VITA) program which assists lower income individuals with their yearly tax returns.

As a Certified Public Accountant (CPA), Hayley previously worked as an Internal Audit Consultant for a national firm. With a Masters in Professional Accounting from the University of Texas, Hayley holds degrees in Accounting and Finance from the University of Miami. Raised in Fort Myers, she is also a proud graduate of the International Baccalaureate program at Fort Myers High School.

In her free time, Hayley enjoys running, swimming, and watching the Boston Red Sox.

FROM OUR CLIENTS

We thought we understood living trusts when we went to see Hayley at the firm, but we learned how much we didn't know. Hayley was very knowledgeable, asked questions, and truly listened to our answers. While helping us broach tough subjects. Everyone we dealt with was exceedingly helpful and professional. It was **obvious that their goal was to create a trust to meet our specific needs**. No matter how many questions we asked, **everyone was always happy to help**.

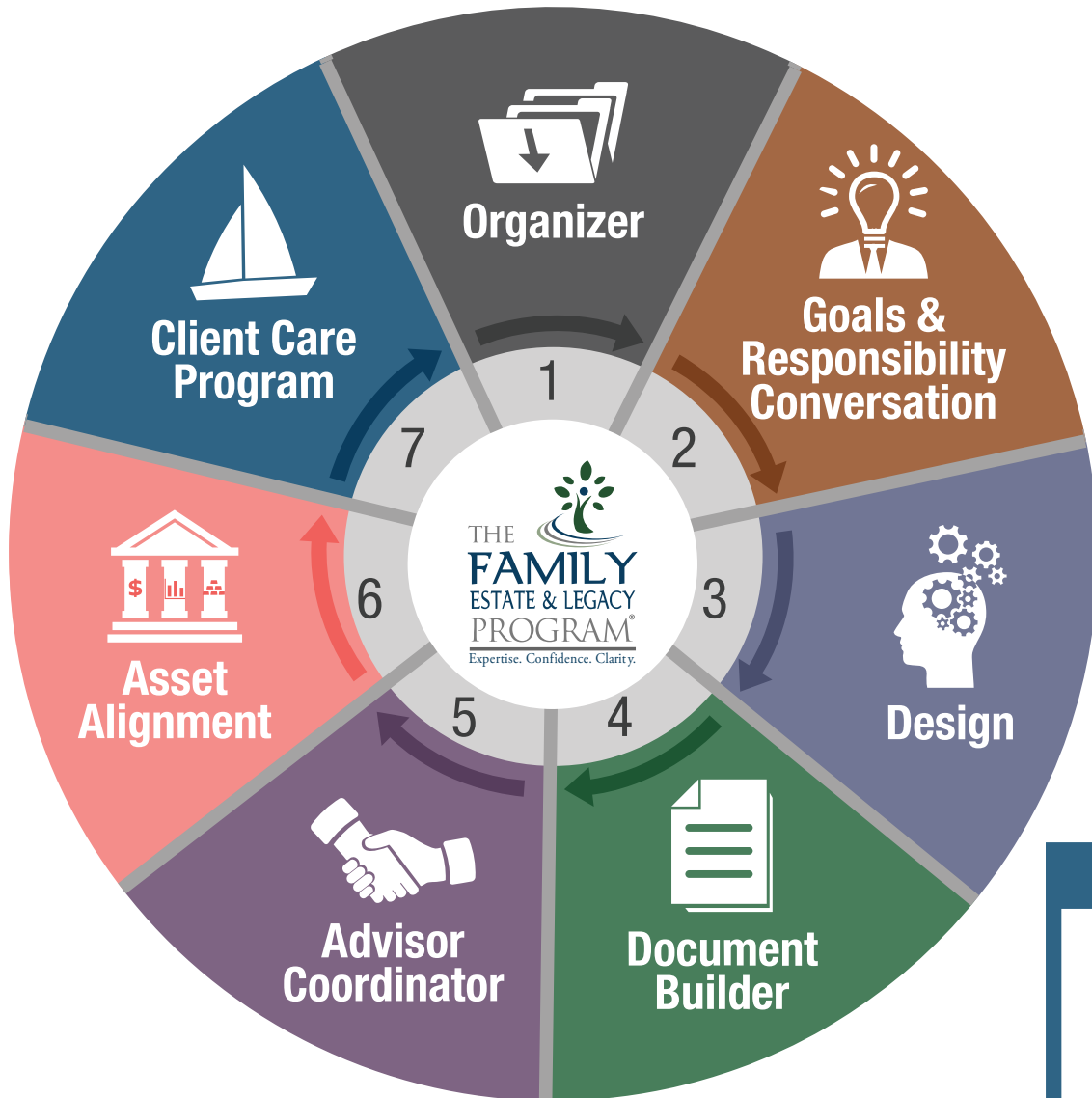
Gary & Connie H. | Fort Myers, FL ★★★★★

ABOUT OUR PROCESS:

Comfort. Clarity. Peace of Mind.

Explore the steps in our Family Estate & Legacy Program™ process, created by our Florida Board-Certified Estate Planning Attorneys.

Learn how we guide you through the creation of the best estate plan for you & your loved ones.



SCAN HERE



WATCH OUR SHORT VIDEO!

LEARN MORE: FLORIDAESTATEPLANNING.COM/OUR-PROCESS/

SUCCESS STORIES

“My husband and I have been clients of the Sheppard Law Firm for 17 years. We have always been very pleased with the knowledge, counsel, and professionalism of Craig R. Hersch. Recently, we had our estate planning documents reviewed and updated, and **we could not be more pleased with the results and Craig's dedicated efforts.**”

Pamela M. | *Naples, FL* ★★★★★

My husband and I have worked with this firm for 5 years, and we couldn't be happier. Craig Hersch and Maria Reimer are exceptional, **taking the time to understand our goals thoroughly.**

Craig even arranged a meeting with our executor (daughter) to ensure she knows the firm beforehand. Maria's meticulous work on our revocable trust gave us **great confidence.** Mike Hill has also been impressive with ongoing updates. We appreciate the complimentary educational seminars on legislative actions. Craig's books are an added benefit...the quality of work is outstanding. **We trust this firm and confidently recommend them to our friends!**

Diana P. | *Fort Myers, FL* ★★★★★

“We cannot thank enough Attorney Michael Hill for his courteous, professional, gracious, and attentive service regarding the estate plan, trust, and related documents he prepared for us. When it came time for us to deal with matters relating to the trust twelve years later, he was once again courteous, professional, gracious, and attentive to our needs and questions. **We would recommend [Sheppard Law Firm] to anyone seeking assistance with estate planning, trusts, and related issues.**”

Theresa S. | *Fort Myers, FL* ★★★★★

“What sets Sheppard Law Firm apart is their personalized approach. They took the time to listen to my concerns, goals, and family dynamics. Instead of offering cookie-cutter solutions, they tailored their recommendations to fit my specific circumstances. **I felt like more than just a client—I was a valued individual with unique needs.**”

Bronwyn B. | *Captiva, FL* ★★★★★

“I have worked with the Sheppard Law Firm for the last five years. As the former CEO of one of the largest independent Trust Companies in the US, I have seen the work of many law firms. Sheppard ranks among the very best in my view. **They operate with the highest integrity and are well versed in the intricacies of estate planning.**”

Jim M. | *Fort Myers, FL* ★★★★★
