MORTGAGES/HELOCs ON REAL ESTATE TITLED IN TRUST:

If you currently have a mortgage or Home Equity Line of Credit (HELOC) on your property, there is no need to notify your lender that you have conveyed the property to a trust. If you re-finance your existing loan or apply for new financing in the future, some lenders (those through Fannie Mae) may tell you that you need to take the property out of trust (return title to your own individual name) as a condition of closing on the loan. Those same lenders will, however, likely tell you that you may put title back in trust after the loan has closed. Of course, these transactions cost money and I urge you to locate a lender who will not require these unnecessary steps. The *Garn-St Germain Depository Institutions Act of 1982* (a federal law) permits mortgaged real estate to be transferred into an *inter vivos* (living) trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property. This means that a lender should not require you to remove property from trust as a condition of financing, but not all lenders appear willing to abide by the federal law.

Remember that one of the primary benefits of your trust(s) is to avoid the cost and delay of the Probate Court process at your death and taking title out of trust and putting it back in your individual name means probate will be necessary (unless you put title back into trust after closing on the loan).

Therefore, I recommend that, if you apply for financing, you ask up-front about whether the lender will permit you to keep your property in trust. Be sure that a representative with knowledge and authority gives you a confident, definitive answer. If the lender will require you to remove the property from trust, you may want to consider going to another lender. The following list of lenders are those which clients and colleagues have reported will allow property to remain in trust as part of the financing process (it is *not a list of all lenders* and *you would want to confirm before proceeding with any specific lender*, however, since policies may have changed):

- Ameriprise Bank
- Avidia Bank
- Bank of America (US Trust)
- Belmont Savings Bank
- Citizens Bank
- Digital Federal Credit Union
- Eastern Bank
- Easthampton Savings Bank
- Fannie Mae
- Freddie Mac
- Florence Savings Bank
- Greenfield Cooperative Bank
- Greenfield Savings Bank
- Middlesex Savings Bank
- People's United Bank
- Sovereign Bank

Winchester Cooperative Bank
Wells Fargo
TD Bank
U.S. Trust (used to multi-layers)
USAA Federal Savings Bank
Watertown Savings Bank

New Hampshire
Service Federal Credit Union

<u>Banks that have **not** let clients borrow with property in a nominee trust:</u>

- Northern Bank and Trust Co.
- Santandar (unless Schedule of Beneficial Interests lists individual)
- Loandepot.com
- Quicken Loans (but they'll put it back into trust as part of closing!)
- Enterprise Bank (but they will allow you to use the *Family Trust*)
- Athol Savings Bank

<u>Options when a lender insists that it will not allow a mortgage or refinancing while title is in trust:</u>

1) <u>Do as they wish</u> – have our office or the lender prepare a deed conveying title out of trust and into your individual name(s) and then, once you have closed on the financing, sign a new deed putting property back into trust.
    - Some lenders will offer to do this for you or make it clear that what you do after closing does not matter, but I would not announce it to the lender or ask permission – just do it!
    - This will, generally, cost approximately $250- $300 for each transaction (legal and Registry recording fees) – it may be worth it if you are getting a really favorable interest rate!
2) <u>Find another lender</u> (easier, of course, if you are not too far into the loan process)
3) <u>Ask if changing the Schedule of Beneficial Interests</u> on the *Investment Trust(s)* to read your name(s), individually, for life, then your *Family Trust*, will satisfy them. This permits title to remain in trust and has you changing only a private, unrecorded document.