

SUCCESSION

Māori Land Court/Te Kooti Whenua Māori

This is a summary only. For more details, go to maorilandcourt.govt.nz

The Māori Land Court (Te Kooti Whenua Māori) is the New Zealand court that hears matters relating to Māori land. The special bond between Māori people and the land is recognised by the Māori Land Court and the records held by the court form an invaluable part of the whakapapa of all Māori. The Māori Land Court operates under the provisions of the Te Ture Whenua Māori Act 1993 (the Act).

Definition of succession

Māori land is owned by either one owner or several owners. In some cases, there are hundreds of owners for one block or title.¹ When an owner dies, it's important to transfer their interests to the person or people entitled to receive those interests – “successors”.² The process is called succession. Successors are entitled to make decisions about the use of the land for the benefit of themselves and future generations.

When ownership lists aren't kept up to date and succession doesn't occur, there can be communication problems among the living owners. No one has the right to vote for the interests of a deceased person until there has been succession. However, an administrator³ appointed under a grant of administration⁴ can vote once the shares are vested⁵ in the administrator.

Succession order

To legally transfer the land interests of a deceased person to successors, the Māori Land Court (MLC) issues a succession order.⁶

Finding out if you have entitlement for succession

If a family member has died and you believe they may have owned interests in Māori land to which you may be entitled to succeed, you can find out about those interests by:

- visiting the MLC and searching their database. See the back page of this factsheet for contact details

1. The official record of legal ownership of property and the legal evidence of a person's ownership rights.

2. A person who receives, as of right, a share of a deceased person's estate.

3. Someone given authority by the High Court to manage and administer the estate of a deceased person. When the High Court appoints an administrator, the court issues a grant of letters of administration (a female administrator is called an administratrix).

4. A grant of administration from the High Court is generally required to enable the assets of a deceased person to be transferred to those entitled to the assets. There are 2 types of grant: (a) Where a person dies leaving a valid will, a grant of probate may be made to the executor/s named in the will (although in rare cases, formal administration may be granted to someone other than the named executors); (b) Where a person dies intestate (without a will), a grant of letters of administration is obtained.

5. The administrator/s are responsible for ensuring that these assets are transferred to those entitled to them.

6. A change of ownership of land gives the recipient of that interest the ownership and its associated rights (land may be vested in a trustee, or shares may be vested in another person).

- fill in an application for MLC staff to search the records for you (a Part 4 search). This service is free
- search the Māori Land Online database. See the back page of this factsheet for contact details

Searching Māori Land Court records

Before a search, get as much information about the deceased person as possible. This will help the MLC determine all of the deceased person's land interests. The information you'll need is:

- all the deceased person's names (including maiden name, if applicable)
- the deceased person's brothers' and sisters' names
- the deceased person's parents' names (including their mother's maiden name)
- the names of anyone from whom the deceased person may have obtained interests
- the names of the lands in which the deceased person may have had interests.

Assets the Māori Land Court deals with

In most cases, the MLC can make succession orders for:

- any interest in Māori land
- any freehold interest owned by a Māori in general land⁷ (but only on application by a personal representative⁸ appointed by the High Court)
- any leasehold interest in a registered cross lease⁹ over Māori land
- money held by the Māori Trustee (or any other agent, trustee¹⁰ or Māori incorporation) for the deceased derived from Māori land
- interests in Tītī Islands
- interests in the Wi Pere Trust
- ōta whakanoho (occupation order)

Assets the Māori Land Court can't deal with

The MLC can't make succession orders if the estate of the deceased includes:

- general land (except for property held jointly, like a joint family home, where the partners are joint tenants)¹¹

7. In broad terms, land that is not Māori land and is not Crown land.

8. An executor, administrator or trustee of a will.

9. A cross lease occurs where several owners of land in one title lease out separate areas, within that title, to each other individually for house sites. A composite title is issued to each house owner, comprising: (a) the freehold share of the lessee in the whole block and (b) the leasehold interest of the lessee in the individual site.

10. A person bound to deal with property on behalf of the owners or beneficiaries. The trustee becomes the legal owner when the order appointing him/her as trustee for the land is registered against the title. The beneficiaries are called the beneficial owners.

11. People who own the land jointly. The interests are not split between them – they are co-owners. If one owner dies, the other joint tenant/s automatically succeeds to the interest that the deceased joint tenant held.

- cash over \$11,000 held by a bank or an insurance company
- significant company shares
- unless the estate is under formal administration. In these cases, MLC staff will advise you to seek legal advice to have an administrator appointed. The administrator can then apply for succession to any Māori land interests to the successors.

Applying for succession

To apply for succession, you need to visit an MLC office. See the back page of this factsheet for contact details.

You can get an application form from an MLC office or you can download one from our website. The application can include all Māori land interests in all MLC districts, including Māori incorporation shares. You don't need to file separate applications for each district. Give your completed form to the MLC office along with:

- the original death certificate or a copy
- the original will¹² or a certified copy of the will
- the original grant of administration, if any, or a certified copy
- the application fee (the amount is written on the form).

At the same time as applying for succession, you can apply to establish a whānau trust.¹³ You need to send both applications at the same time.

Hearing your application in court

A family member will need to attend the MLC hearing to answer any questions from the Judge. The application may be heard in the district where the land is situated or you may request to have the hearing at a location closer to you.

Previous legislation

Some succession cases are dealt with under previous legislation. These are:

- if the administration of an estate was granted by the High Court before 1 July 1993, or
- if a person died before 1 July 1994 leaving a will dated before 1 July 1993.

Entitlement to succession under the Act

Except where there's a will, succession to Māori land and Māori incorporation shares is dealt with under section 109 of the Act which says:

- The surviving spouse¹⁴ or civil union partner is entitled to an interest until they die or remarry, provided there was no legal separation order¹⁵ in existence when their spouse or civil union partner died. This interest gives the spouse or civil union partner the right to receive income¹⁶ only (like rent or interest) but not the proceeds of the sale of land or

12. The directions, in legal form, for the distribution of one's property after death.

13. A trust formed around common tupuna that allows the whānau to bring together their Māori land interests for the benefit of the whānau being the descendants of the common tupuna.

14. A legal partner of the deceased.

15. An order of the Family Court that legally recognises that a married couple have separated.

16. Money that is derived from assets held and earnings (such as rent and interest) but not "purchase money" (land converted into money).

compensation for land taken for any purpose. The spouse or civil union partner doesn't have to accept the life interest.¹⁷

- As soon as life interest terminates, the land interests will go to the successors outlined below. The family needs to apply to the Registrar of the Māori Land Court for that to happen.
- Subject to any life interest (outlined above), the deceased's children are entitled to any interests in equal shares. Children legally adopted into the family are included in the entitlement, but children legally adopted out are not.
- The interest of any child who died before the deceased will pass to that child's children – and so on down the family tree.
- If the deceased had no children, their brothers and sisters are entitled to interests. Any half brothers and sisters are entitled to share only in interests that the deceased obtained from their common parent.
- If the deceased has no brothers and sisters, it will be necessary to find out where the interests came from and, from that whakapapa,¹⁸ decide where the interests should go.
- In the unlikely event that no one is entitled to succeed, the Court can determine who should succeed and, if necessary, create a trust for the deceased's interests.

These provisions also apply to an occupation order as if it were a beneficial interest in Māori land, provided the person owns a beneficial interest in the land to which the occupation order applies and the court is satisfied the person should succeed to the occupation order.

Interests of a child

When the successor is a child at the time the MLC makes the succession order, the court can also appoint a kaitiaki¹⁹ trustee to act for the child until they're 20 years of age or marry, whichever is sooner.

Whāngai

The Act permits the inclusion of whāngai²⁰ in succession and gives the court power to determine the extent of that person's share. The family may want to include whāngai, but only to a limited extent, and the MLC can respect that wish. It must be satisfied whāngai should be included and will seek evidence from the family about this.

Outstanding debts

The MLC is unlikely to make a succession order until any significant outstanding debts against the deceased's estate are paid. Income from land interests may be directed to repaying debts. If requested by the family, the MLC can direct that money held be used to pay for such things as funeral expenses.

SELLING MĀORI LAND TO PAY DEBTS

The Act doesn't allow estate trustees to sell Māori land to pay the deceased's debts. However, income from the land (like

17. A life interest (or life estate) gives a person (usually a surviving spouse) the right to receive income from the estate. That person is called the life tenant. When the life tenant dies, their right to life interest finishes. Many life interests state that the life interest will terminate if the life tenant remarries.

18. A person's genealogy or family tree linking them to a particular family or ancestor.

19. A trustee/guardian.

20. A person adopted informally in terms of tikanga Māori and brought up as the adopting parent's own child without formal adoption being concluded by any court.

rent or interest) can be used to pay debts. The estate trustees can sell the land if beneficiaries²¹ want it sold and if all other requirements of the Act are met.

Leaving Māori land interests to a person or people

An owner of Māori land interests can leave these interests by will but only to the people set out in the Act (until 1 July 1993, there wasn't any limitation and a person could leave their interests to whoever they wished). When making a will, you or your solicitor should check the provisions of section 108 of the Act but, in summary, Māori land interests or Māori incorporation shares can only be left to:

- children or descendants
- brothers and sisters (but half-brothers and half-sisters may only receive interests that the testator²² received from their common parent)
- anyone entitled to receive interests by whakapapa
- anyone related to the testator by blood who is a member of the hapū associated with the land
- other land owners who are members of the hapū associated with the land
- whāngai of the testator
- trustees of any of the above
- the spouse or civil union partner for life or a shorter period (usually for widowhood).

The holder of an occupation order may also leave the occupation order to any one or more of the persons listed above, provided the person owns a beneficial interest in the land to which the occupation order applies and the Court approves it.

If Māori land is willed to someone who doesn't qualify, that part of the will is invalid. However, the rest of the will won't be affected. The Māori Land Court will determine who should succeed to the land on the basis of law.

The Court can decide that other people not included in the above list be given a life interest. They could be a de facto spouse, a stepchild or someone who the deceased may have felt a moral obligation to make provision for.

The will

PERSONAL REPRESENTATIVE

When there's a will, the personal representative (executor)²³ usually applies to the High Court for probate²⁴ and then administers the estate. The personal representative is responsible for making sure all the details in the will are finalised. However,

21. Person(s) who benefit from a trust or estate.

22. One who makes a will.

23. A person appointed to carry out certain duties under the last will of a deceased person. The deceased will have named the executor in his/her will. Appointment of the executor is confirmed by the High Court when the value of the assets is substantial, or where the type of assets require this (see page 2). When an executor is confirmed by the High Court, that court issues probate in his/her favour. (If the will does not name an executor/executrix, then the person who is appointed by the High Court to administer the estate is called an administrator/administratrix.)

24. When the High Court confirms the appointment of an executor to administer the will of a deceased person, the court's authority for that person to act is given in a grant of probate.

if the estate is small, the family may decide not to seek probate from the High Court.

Whether or not the High Court has appointed a personal representative, the MLC can make succession orders where:

- the deceased died before 1 July 1993 (the will applies)
- the deceased died between 1 July 1993 and 1 July 1994 (the will applies as long as the will was signed before 1 July 1993)
- the deceased died after 1 July 1993 and will was signed after 1 July 1993 (the will applies only if it complies with the Act).

Grant of administration made by High Court

When the High Court has already made a grant of administration, the MLC can hold a succession hearing. It can transfer the interests directly to the beneficiaries, or the personal representative who must later seek another court order²⁵ in favour of the beneficiaries.

Contesting the will

If you want to contest²⁶ the will, you can apply to the High Court. Or you can apply to the Family Court under the Family Protection Act 1955. Due to the cost, you may prefer to apply to the Family Court rather than the High Court. If you do apply to one of these courts, you must file a notice of your application with the MLC so it won't make any orders before the High Court or Family Court has dealt with the matter.

You must apply within 12 months of the grant of administration. If the application is made on behalf of a minor²⁷ or someone with a disability,²⁸ you have 2 years to apply. The High Court or Family Court can extend either period if the estate hasn't been distributed.

Māori Incorporation shares

If the family wishes, the MLC can include incorporation shares in a succession order unless:

- administration was granted before 1 July 1993
- the person died before 1 July 1994 and their will is dated before 1 July 1993.

In these cases, the family or personal representative needs to approach the incorporation secretary directly.

Entitlement to succession

Before 1 July 1993, Māori incorporation shares were dealt with in the same way as other personal property (like cars and cash). Where there wasn't a will, the surviving spouse was usually entitled to receive non-Māori land assets, including Māori incorporation shares.

Since 1 July 1993, shares in a Māori incorporation are deemed to be interests in Māori land and unless there's an exemption, they're treated the same as Māori land interests.

25. A document prepared and signed by a court, to give effect to a decision of a judge of the court.

26. To dispute or challenge a will.

27. A person who has not yet reached the age of 20 and has not legally married.

28. Physical or mental disablement that, in the opinion of the court, results in a person lacking, wholly or partly, the competence to manage their affairs in relation to their property.

Whānau trusts

A whānau trust can be set up at the time of succession. However, any person included in the trust must consent to their interests being included in the trust. If any family members don't consent, their interests must not be included and they'll receive their shares personally.

Where a family member isn't included and doesn't contribute shares to the trust, it's important the whānau trust order doesn't inadvertently include that person as a beneficiary.²⁹

Often the tipuna named in the order is the deceased parent and the beneficiaries are named as all the descendants of that parent. The tipuna may still be named but the beneficiaries must be clearly defined as excluding any family member who had declined to contribute shares to the trust.

It's important the beneficiaries of the land interests be determined first in case the whānau trust is ever terminated. The land interests would then go directly back to those beneficiaries of the estate who contributed shares to the whānau trust.

Māori Trustee

The Māori Trustee administers many Māori land blocks and distributes money to the owners. The MLC automatically sends a copy of all orders affecting ownership to the Māori Trustee to keep land records up to date. Because the Māori Trustee also distributes money from Māori land, it's important that addresses are provided for all successors.

Tītī Islands interests

Interests in the Tītī Islands can't be willed. Those entitled to succeed must be one or more of the following:

- descendants
- those related by blood to the deceased
- those legally adopted.

Wi Pere Trust interests

A beneficiary in the Wi Pere Trust who has left a will may dispose of their interests only to a person who is one or more of the following:

- children and remoter issue (that is, grandchildren, great-grandchildren) of the beneficiary
- any person who would be entitled to succeed to the interest if the beneficiary died without leaving a will
- any other person related by blood to Wi Pere
- trustees of any person referred to above.

Where the beneficiary died without leaving a will, succession will be the same as for Māori land. In either case, however, any adopted child (or that child's children or grandchildren) isn't entitled to succeed to any interest in the Wi Pere Trust greater than a life interest, unless they're also related by blood to Wi Pere. (The provisions of section 2 of the Māori Purposes Act 1991, relating to the Wi Pere Trust Estate, override the provisions of the Adoption Act 1955).

Likewise, a spouse or civil union partner of a beneficiary may also be granted a life interest but nothing greater than that unless he or she is related by blood to Wi Pere.

More information

To find out more about Transferring Māori Land Shares, visit maorilandcourt.govt.nz/

Or you can visit your local Māori Land Court. We have 9 offices across New Zealand. Our offices are open between 10am and 4pm on normal week days. You don't need to make an appointment. Contact details are on the back page of this factsheet or visit maorilandcourt.govt.nz/contact-us/

Contact the Māori Land Court

The DX number is the postal address.

Taitokerau District	Registry Office, 3rd floor, Manaia House Rathbone Street, Whangārei 0110 DX Box AX10086, Whangārei Phone 09 983 9940 Email mlctaitokerau@justice.govt.nz
Auckland Information Office	Ground floor, Building B, 65B Main Highway Eilerslie, Auckland 1051 DX Box EX10912, Auckland Email mlctamakimakaurau@justice.govt.nz
Waikato-Maniapoto District	Registry Office, L2, BNZ Centre 354 Victoria Street, Hamilton 3204 DX Box GX10101, Hamilton Phone 07 957 7880 Email mlcwaikato@justice.govt.nz
Waiariki District	Registry Office, Hauora House 1143 Haupapa Street, Rotorua 3204 DX Box JX10529, Rotorua Phone 07 921 7402 Email mlcwaiariki@justice.govt.nz
Aotea District	Registry Office, Ingestre House 74 Ingestre Street, Whanganui 4500 DX Box PX10207, Whanganui Phone 06 349 0770 Email mlcaotea@justice.govt.nz
Tākitimu District	Registry Office, L2 Heretaunga House Cnr Lyndon and Warren Street Hastings 4122 DX Box MX10024, Hastings Phone 06 974 7630 Email mlctakitimu@justice.govt.nz
Tairāwhiti District	Registry Office, Ngā Wai e Rua Building Cnr Reads Quay and Lowe Street Gisborne 4010 DX Box PX10106, Gisborne Phone 06 869 0370 Email mlctairawhiti@justice.govt.nz
Te Waipounamu	Justice & Emergency Services Precinct 20 Lichfield Street Christchurch 8011 DX Box WX11124, Christchurch Phone 03 962 4900 Email mlctewaipounamu@justice.govt.nz
Office of the Chief Registrar	Level 7, Fujitsu Tower 141 The Terrace Wellington DX Box SX11203, Wellington Phone 03 962 4900 Email mlctewaipounamu@justice.govt.nz

29. Person who benefits from a trust or estate..