

MĀORI LAND TRUSTS

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 this 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').

The kaupapa of the Act is to promote the retention of Māori land in the hands of its owners and their whānau and hapū and to facilitate the occupation, development and utilisation of that land for the benefit of its owners and their whānau and hapū.

The Māori Land Court deals with applications for new trusts, replacement trustees, variations to trusts, reviews of trusts and formal complaints. The Māori Land Court also receives trust reports and financial accounts. It does not administer trusts.

Types of trusts

Under Part 12 of Te Ture Whenua Māori Act 1993, there are 5 types of trusts.

■ Ahu whenua trust

This is the most common Māori land trust. It's designed to promote the use and administration of the land in the interest of the owners. These trusts are often used for commercial purposes.

■ Whenua tōpū trust

This is an iwi- or hapū-based trust. It's designed to facilitate the use and administration of the land in the interest of the iwi or hapū. This type of trust is also used for receiving Crown land as part of any settlement. Ahu whenua and whenua tōpū trusts are land management trusts and generally involve whole blocks of land.

■ Kaitiaki trust

A kaitiaki trust relates solely to an individual who is a minor or has a disability and is unable to manage his or her affairs. This trust can include all of an individual's assets.

■ Whānau trust

This is a whānau-oriented trust. It allows the whānau to bring together their Māori land interests for the benefit of the whānau and their descendants.

To find out more about the types of trusts, visit maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations/

Setting up a trust

Landowners can set up a trust by holding a meeting, nominating trustees to manage their property interests, and then applying to the Māori Land Court (application forms can be obtained from Māori Land Court offices). Except for kaitiaki trusts, the process is the same to set up each type of trust. The owners first need to have a meeting at which they:

- agree to set up the trust
- agree which blocks of land or shares should be included in the trust
- agree to the terms of the draft trust order which sets out the trustees' powers, rights and obligations
- nominate trustees
- take accurate minutes.

To find out more about how to set up a trust, visit maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations/creating-a-trust-or-incorporation/

Types of trustees

The Act recognises 3 types of trustee.

RESPONSIBLE TRUSTEES

Responsible trustees are responsible for:

- carrying out the terms of the trust order
- administering and managing the business of the trust
- preserving the assets of the trust
- collecting and distributing the trust's income.

CUSTODIAN TRUSTEES

Custodian trustees are responsible for:

- gathering together and holding the assets of the trust
- investing funds
- disposing of assets
- signing documents as directed by the responsible trustees.

Custodian trustees are not responsible for administering the trust – the responsible trustees are.

The assets of the trust are vested in the custodian trustee where one is appointed.

ADVISORY TRUSTEES

Advisory trustees are responsible for

- giving advice to the responsible trustees. They are not responsible for administering the trust.

Trustees' duties

Trustees are bound by the Act and the Trustee Act 1956. Their key duties are “to maximise the assets and minimise the liabilities of the trust” to the best of their ability and within the law. Their powers, rights, and obligations are set out in the trust order.

Trustees must not spend money unnecessarily or without proper authority, as this is a breach of the trust order. If they do, the beneficiaries have the right to hold them personally liable for any financial loss brought about by their mismanagement. The beneficiaries can take a case to the Māori Land Court or the High Court.

The Courts regard any breach of trust as a very serious matter, and if trustees are found to be at fault, they can expect to pay for any losses that they have caused.

To find out more about trustees' duties, visit maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations/trustees-duties/

Administering the trust

Trustees are responsible for the day-to-day running of the trust (the Māori Land Court does not administer trusts). Trustees are appointed to ensure that the landowners' interests are met, and so they should communicate regularly with the landowners. They should also keep the Court up to date because landowners often make enquiries of the Court. Landowners have appointed

trustees to act on their behalf and to administer their property, and so they should allow the trustees the opportunity to operate.

TAX ON TRUST INCOME

Different types of taxes may apply to trusts. The trustees should discuss the trust's tax liability with Inland Revenue and/or their accountant.

Once created, the trust is a separate legal entity and is required to have its own IRD number.

To find out more, visit ird.govt.nz (keywords: business advisory) and ask a Kaitakawaenga Māori or Community Compliance Officer to contact you. This advisory service is free and has been established to help meet the needs of Māori individuals, organisations and businesses.

RESOLVING PROBLEMS

Should problems arise, the owners and trustees should try and sort out the problems themselves to avoid legal action. If the problems cannot be resolved, the landowners can apply to the Māori Land Court to:

- review the terms, operation, or other aspect of the trust
- add, replace, or remove trustees
- investigate the trust
- enforce the terms of the trust
- vary the terms of the trust
- terminate the trust.

An application to the Māori Land Court needs to be filed on the relevant application form and accompanied by the application fee, which is shown on the form. Evidence supporting any allegations must also be filed.

More information

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

Or you can visit your local Māori Land Court. We have nine offices across New Zealand. Our offices are open between 10am and 4pm on normal week days. You don't need to make an appointment. **To find contact details**, visit maorilandcourt.govt.nz/contact-us/