



# SUCCESSION

TE TURE WHENUA MĀORI ACT 1993

*Te Kōti Whenua Māori*



*Māori Land Court*

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MINISTRY OF  
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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 (referred to as ‘the Act’ throughout this booklet).

*Succession* is one of a series of Māori Land Court booklets designed to help Māori—and anyone else with an interest—to gain a fuller understanding of current Māori land matters. It is a comprehensive guide to the process and regulations relating to the transfer of the Māori land interests of a deceased owner to his or her successors.

## 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<sup>1</sup>. When an owner dies, it is important to transfer his or her interests to whoever is entitled to receive those interests. Those people are called successors<sup>2</sup> and the process is called succession.

Successors are then entitled to make decisions about the use of that land for their benefit and for the benefit of future generations.

When ownership lists are not kept up to date and succession does not occur, communication problems can occur among the living owners.

No one has the right to vote for the interests of a deceased person until succession has been achieved. However, an administrator<sup>3</sup> appointed under a grant of administration<sup>4</sup> has the right to vote once the shares are vested<sup>5</sup> in the administrator.

### Succession order

To legally transfer the land interests of a deceased person to successors, the Māori Land Court issues a succession order<sup>6</sup>.

## Finding out if you have entitlement for succession

If a family member has died and you believe that he or she 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 Māori Land Court and searching the electronic database or getting someone to do this for you

- completing an application for a search. This application will require the Māori Land Court staff to search the record for you. This process is known as a Part IV search and is provided free of charge
- searching on the Māori Land Online (MLOL) database, available through the Māori Land Court website.

### Searching Māori Land Court records

Before starting a search, get together as much of the following information about the deceased person as possible. This information will assist the Māori Land Court to determine all land interests:

- 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 the 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, succession applications can be dealt with by the Māori Land Court.

The Māori Land Court can make succession orders for:

- any interest in Māori land
- any freehold interest owned by a Māori in general land<sup>7</sup> (but only on application by a personal representative<sup>8</sup> appointed by the High Court)

- any leasehold interest in a registered cross lease<sup>9</sup> over Māori land
- money held by the Māori Trustee (or any other agent, trustee<sup>10</sup>, or Māori incorporation) for the deceased derived from Māori land
- interests in Tītī Islands (see page 8)
- interests in the Wi Pere Trust (see page 8)
- ōta whakanoho (occupation order).

## Assets the Māori Land Court cannot deal with

The Māori Land Court cannot 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<sup>11</sup>)
- cash over \$11,000 held by a bank or an insurance company

- significant company shares, unless the estate is under formal administration (see Footnote 4, below, for an explanation of formal administration). Māori Land Court staff will advise you to seek legal advice to have an administrator appointed. That administrator can then apply to the Māori Land Court for succession to any Māori land interests to the successors.

## Applying to the Māori Land Court for succession

You need to file an application for succession at a Māori Land Court office. Application forms are available from Māori Land Court offices.

The application can include all Māori land interests in all Māori Land Court districts, including Māori incorporation shares. You do not need to file separate applications for each district.

### Footnotes

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 who is given authority by the High Court to manage and administer the estate of a deceased person. When an administrator is appointed by the High Court, 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 two 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).

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.

You need to include with the completed application form:

- the original death certificate or a copy certified by a notary public, a solicitor of the High Court, a Justice of the Peace, an employee of NZ Post Ltd, a Registrar of the High Court, District Court or Māori Land Court, or a registered medical practitioner
- the original will<sup>12</sup> or a certified copy of the will
- the original grant of administration, if any, or a certified copy
- the application fee.

The fee is shown on the application form.

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

At the same time as applying for succession, you can apply to establish a whānau trust<sup>13</sup>. You need to include both applications (this streamlines the process so that you, the Court staff, and the Judge are able to deal with the succession and the establishment of a whānau trust at the same time).

More information on whānau trusts can be found in 'Māori Land Trusts', available from Māori Land Court offices.

There are some succession cases that are dealt with under previous legislation. These are:

- when the administration of an estate was granted by the High Court before 1 July 1993, or

- when a person died before 1 July 1994 leaving a will dated before 1 July 1993.

## Entitlement to succession

Except where there is a will (see page 6), succession to Māori land and Māori incorporation shares is dealt with as set out in section 109 of the Act as follows:

- The surviving spouse<sup>14</sup> or civil union partner is entitled to an interest until he or she dies or remarries, provided that there was no legal separation order<sup>15</sup> in existence when his/her spouse or civil union partner died. This interest gives the spouse or civil union partner the right to receive income<sup>16</sup> only (rent, interest, etc.) but not the proceeds of the sale of land or compensation for land taken for any purpose. The spouse or civil union partner does not have to accept the life interest<sup>17</sup>. As soon as the 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, his or her 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<sup>18</sup> work out 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 that the person owns a beneficial interest in the land to which the occupation order applies and the Court is satisfied that the person should succeed to the occupation order.

## The interests of a child

When the successor is a child at the time the Māori Land Court makes the succession order, the Court can also appoint a kaitiaki<sup>19</sup> trustee to act for the child until he or she reaches 20 years of age or marries, whichever occurs sooner.

For more information, the booklet 'Māori Land Trusts' includes a section on kaitiaki trusts. The booklet is available from Māori Land Court offices.

## Whāngai

The Act permits the inclusion of whāngai<sup>20</sup> in succession and gives the Court the 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 Māori Land Court can respect that wish. The Māori Land Court must be satisfied that whāngai should be included and will seek evidence from the family about this.

## Outstanding debts

The Māori Land Court is unlikely to make a succession order until any significant outstanding debts against the deceased's estate are settled. If the Court were to distribute those interests to the successors before the debts were paid, the estate would lose its ability to pay its debts. Any income from land interests may be directed to repaying debts. Sometimes the Māori Land Court is asked by the family to direct the payment of money held (for example, to settle the funeral account), and the Court can do this.

## Selling Māori land to pay debts

The Act does not allow estate trustees to sell Māori land for the purpose of settlement of the deceased's debts. However income

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 wife or husband.

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).

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 that person to a particular family and/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.

from the land can be used to pay debts (rent, interest, etc). The estate trustees do have the power to sell the land if the beneficiaries<sup>21</sup> want the land sold and if all other requirements of the Act are met.

## To whom Māori land interests can be left

An owner of Māori land interests can leave those interests by will but only to those people set out in the Act (up until 1 July 1993 there was no limitation and a person could leave his or her interests to whomever he/she 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 testator<sup>22</sup> 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

that 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 does not 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 is also able to decide that other persons who are not included in the above list be given a life interest. These people could be a de facto spouse, a stepchild, or someone for whom the deceased may have felt a moral obligation to make provision.

## The will

### Personal representative

When a will has been left, the personal representative (executor<sup>23</sup>) usually applies to the High Court for probate<sup>24</sup> and then administers the estate. The personal representative is responsible for making sure that all the details in the will are finalised.

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

Whether or not a personal representative has been appointed by the High Court, the Māori Land Court 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 the will was signed after 1 July 1993 (the will applies only if it complies with the Act).

## Grant of administration made by the High Court

When the High Court has already made a grant of administration, the Māori Land Court can hold a succession hearing. The Māori Land Court can transfer the interests directly to the beneficiaries or, alternatively, to the personal representative, who must later seek another court order<sup>25</sup> in favour of the beneficiaries.

## Contesting the will

If anyone wants to contest<sup>26</sup> the deceased's will, they can make application to the High Court or the Family Court for hearing under the Family Protection Act 1955.

Notice of the application to the High Court or the Family Court should be filed with the Māori Land Court so that it will not inadvertently make any orders before the High Court or the Family Court has dealt with the matter. Due to the cost involved, applications to the Family Court are preferable.

Any application to contest a will must be made to the High Court or Family Court

within twelve months of the grant of administration. If the application is made on behalf of a minor<sup>27</sup> or someone under disability<sup>28</sup>, that period automatically extends to two years. The High Court or Family Court has the power to extend either period if the estate has not been distributed.

## Māori incorporation shares

If the family wishes, the Māori Land Court 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 (such as cars and cash). Where there was no will, the surviving spouse was usually entitled to receive non-Māori land assets, including Māori incorporation shares.

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.

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 through the High Court.

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 his/her affairs in relation to his/her property.

Since 1 July 1993, shares in a Māori incorporation are deemed to be interests in Māori land. Unless exemptions apply, they are treated in the same way as Māori land interests.

## 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 do not consent, their interests must not be included and they will receive their shares personally. Where a member of a family is not included and does not contribute shares to the trust, it is important that the whānau trust order does not inadvertently include that person as a beneficiary<sup>29</sup>. 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 is important that 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 Land Trusts' includes a section on whānau trusts. This booklet is available from Māori Land Court offices. If the family of a deceased person wants to set up a whānau trust, they should obtain a copy.

## Māori Trust Office

The Māori Trust Office administers many Māori land blocks and distributes money

to the owners. The Māori Land Court 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 is important that addresses are provided for all successors.

## Tītī Islands interests

Interests in the Tītī Islands cannot be willed. Those entitled to succeed must belong to one or more of the following classes:

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

(see page 3 about applying for succession).

## 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 belongs to one or more of the following classes:

- children and remoter issue (i.e. 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 who is related by blood to Wi Pere; or
- trustees of any person referred to above.

Where the beneficiary died without leaving a will, succession will be the same as for Māori land (see page 6).

In either case, however, any adopted child (or that child's children or grandchildren) is

not entitled to succeed to any interest in the Wi Pere Trust greater than a life interest, unless he or she is also related by blood to Wi Pere (note that 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

For more information about succession please write to, phone, fax, email, or visit a Māori Land Court office. Staff will be pleased to assist you and discuss any matters with you.

[www.justice.govt.nz/maorilandcourt](http://www.justice.govt.nz/maorilandcourt)

## Māori Land Court offices

### Te Taitokerau district

Registry Office  
2nd Floor, Manaia House, Rathbone Street  
PO Box 1764, Whangārei 0140  
**T** (09) 983 9940  
**F** (09) 983 9941  
**E** mlctaitokerau@justice.govt.nz

### Auckland information office

135 Kolmar Road  
PO Box 23358, Papatoetoe 2155  
**T** (09) 279 5850  
**F** (09) 279 5852  
**E** mlcpapatoetoe@justice.govt.nz

### Waikato Maniapoto district

Registry Office  
Level 2, BNZ Centre, 354-358 Victoria Street  
PO Box 620, Hamilton 3240  
**T** (07) 957 7880  
**F** (07) 957 7881  
**E** mlcwaikato@justice.govt.nz

### Waiariki district

Registry Office  
Hauora House, Haupapa Street  
PO Box 3012, Rotorua 3046  
**T** (07) 921 7402  
**F** (07) 921 7412  
**E** mlcwaiariki@justice.govt.nz

### Aotea district

Registry Office  
Ingestre Chambers, 74 Ingestre Street  
PO Box 7178, Whanganui 4541  
**T** (06) 349 0770  
**F** (06) 349 0771  
**E** mlcaotea@justice.govt.nz

### Tākitimu district

Registry Office  
2nd floor, Heretaunga House  
Cnr Lyndon and Warren Streets  
PO Box 134, Hastings 4156  
**T** (06) 974 7630  
**F** (06) 974 7631  
**E** mlctakitimu@justice.govt.nz

### Te Tairāwhiti district

Registry Office  
Cnr Reads Quay and Lowe Street  
(entrance on Reads Quay)  
PO Box 849, Gisborne 4040  
**T** (06) 869 0370  
**F** (06) 869 0371  
**E** mlctairawhiti@justice.govt.nz

### Te Waipounamu district

Registry Office  
76 Peterborough Street  
PO Box 2200, Christchurch 8140  
**T** (03) 962 4900  
**F** (03) 962 4901  
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### National Office & Office of the Chief Registrar

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