



TRUSTEES' DUTIES

TE TURE WHENUA MĀORI ACT 1993

Te Kooti Whenua Māori



Māori Land Court

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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 Te Ture Whenua Māori Act 1993.

Trustees' Duties 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 roles and responsibilities of the trustees of a Māori land trust.

These roles and responsibilities are drawn from Te Ture Whenua Māori Act 1993 and from the Trustee Act 1956.

Trustees' duties

Trustees¹ are bound by the provisions of Te Ture Whenua Māori Act 1993 and the Trustee Act 1956. Their key duty is "to maximise the assets and minimise the liabilities of the trust"² 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 beneficiaries³ 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.

The trustees' duties can be summarised into the following twelve principles:

1. Acquaintance

The trustees must be familiar with:

- the property administered by the trust
- the terms of the trust order and
- all issues affecting the trust.

2. Adherence

The trustees must act in accordance with the terms of the trust order.

3. Impartiality

The trustees must treat all trust beneficiaries with the same degree of fairness. The trustees are there to act in the best interests of all the beneficiaries.

4. Investments

Investments must be made in terms of the trust order and in accordance with the Trustee Act 1956 and its amendment of 1988.

The government does not guarantee investments. Trustees who invest trust funds must be prudent when investing and seek expert financial advice.

5. Diligence and prudence

The trustees are required to act with the same care, diligence, prudence and good judgment expected of business people managing the affairs of others. For example, unauthorised or unnecessary spending must not occur. Any failure to pay accounts that results in additional payments of interest is not acceptable if that failure was caused by lack of effort by the trustees.

6. Delegation of responsibilities

The trustees must not delegate their responsibilities unless the trust order clearly allows this, or unless delegation is permitted by law. The trustees may, however, employ professionals to assist the trust.

7. Act jointly

The trustees must work together. They must share responsibility for any wrongdoing or mistakes made. All trustees are accountable to the beneficiaries.

8. Act without personal profit

The trustees must not benefit personally from being a trustee. If the trust order permits, they may be entitled to reasonable reimbursement for expenses they incur in carrying out their role as trustee.

9. Pay the right people

The trustees must pay trust money only to the people named on the trust order. They will not be excused for paying the wrong person, even if they mistake the intention of the trust order, or take professional advice to make these payments.

10. Trust account information

The trustees must keep full and proper accounts. The beneficiaries, or their authorised agents, may access the accounts on request. Other information about the trust must also be made available to the beneficiaries upon request.

11. Declare conflicts of interest

The trustees should avoid, if possible, any situation where a conflict of interest might arise. Where it cannot be avoided, the trustees' interests must be declared, and those trustees should not take part in negotiations or decision-making. For example, trustees must not vote on any trust matter in which they also have a personal involvement, such as leasing land from the trust.

12. Regular disclosure

Trustees must keep their beneficiaries regularly informed and provide full details of the financial position and performance of the trust. They must undertake appropriate consultation with beneficiaries on major policy issues and obtain the beneficiaries' consent to any changes to the terms of the trust order.

Trustees' meetings

First trustee meeting

A chairperson, a secretary, and a treasurer should be elected at the first trustee meeting. The selections are made by the trustees with the consent of the nominees.

Chairperson

The chairperson's main duties are to:

- organise meetings with the assistance of the secretary
- ensure that the meeting process is followed and all matters are attended to
- ensure that everyone is given a fair hearing
- perform their duties calmly under pressure
- endorse the meeting minutes
- perform their duties as a responsible trustee in addition to their role as chairperson
- ensure that they do not use their position to influence trustee voting.

Secretary

The secretary does not have to be a trustee. The secretary's main duties are to:

- keep a record of the minutes of all meetings (trustees' and beneficiaries' meetings)
- endorse the meeting minutes
- distribute the meeting minutes

Footnotes

1 Persons 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.

2 An obligation binding the trustee(s) to deal with property over which they have control

(the trust property) for the benefit of the beneficiaries.

3 Person(s) who benefit from a trust.

- ensure that the Māori Land Court has the current trustees' addresses
- keep a current list of trustees' contact details
- receive all correspondence on behalf of the trust
- present correspondence for discussion at trust meetings
- send all correspondence on behalf of the trust
- ensure that all information is kept in order and is made available to trustees and beneficiaries when required.

If the secretary is a trustee, then he or she must also perform his or her duty as a responsible trustee. If the secretary is not a trustee, he or she must not take part in trust discussions and decisions.

Treasurer

The treasurer's main duty is to keep meticulous records of all financial transactions for the trust. The treasurer should ensure that:

- the signatories to the trust account have the authority to sign and that their authorities are lodged with the bank
- financial information is available for the annual financial report
- the trustees are aware of any limits to their financial authority and that any authorised payments do not exceed those limits
- a record is kept of all financial transactions and of related documentation, such as invoices and receipts
- all funds are accounted for
- all financial reports are presented at every trust meeting

- all information is kept in order and is made available to trustees and beneficiaries when required.

If the treasurer is a trustee, he or she should still perform his or her duties as a responsible trustee.

Setting trust goals

The trustees set the trust's goals in accordance with the terms of the trust order. Those goals should determine the trust's work timetable and meeting schedule.

Professional advice

A trust may seek professional advice from a solicitor and/or an accountant if it considers this appropriate.

Ongoing trustees' meetings

Frequency

The frequency of trustees' meetings should be determined by the trust's business needs, unless there is a specific direction in the trust order. When setting up the trust or managing any developments, the trustees may require regular meetings. If there is little or no business to attend to, meeting unnecessarily may be a drain on the trust's resources.

Giving notice

When the need arises, any trustee can call a meeting. For practical reasons, it is advisable to provide trustees two to three weeks notice of meetings to allow them to make business and travel arrangements. The purpose of the meeting and the agenda items should be included in the notice.

Quorum

Trustees act by majority of the trustees (section 227 of the Act). The minimum quorum⁴ for any trust meeting must therefore be more than half of the appointed responsible trustees and not simply half the number of those trustees present and any decision must be agreed to by more than half of those trustees. If a quorum is established at the meeting but fewer than half of the appointed trustees agree to any resolution, then that resolution must fail because section 227 requires a majority of the total trusteeship to agree.

It is rare for a higher quorum to be imposed by the trust order, but trustees should always check the order to make sure. It is also important to note the convention that when exercising a casting vote the Chairperson support the status quo.

Voting

Only the responsible trustees can vote at a trustee meeting.

If the trust is a Māori Reservation, and a vote on an issue is evenly split, the chairperson has the deciding vote in accordance with Regulation 17(h) of the Māori Reservation Regulations 1994. This principle will only apply to other trusts if stated in the trust order.

Attendance

The trustees are free to invite other people to the meetings, where applicable. In particular, this may happen when the trust is seeking professional advice. In general, a trustee meeting should be for the trustees

only, but in some cases, it may be beneficial for the beneficiaries to attend.

The trustees are obligated to attend all meetings relating to the trust. If a trustee is continually absent from meetings, the Māori Land Court may remove the trustee.

Beneficiaries' meetings

Frequency

Usually, the trust order stipulates how often beneficiaries' meetings should be held. If the order makes no stipulation, the trustees must use their discretion. The trustees should be available to attend all beneficiaries' meetings.

The trustees must keep the beneficiaries informed about the trust's business, and obtain their support for any decisions that the trust makes.

Beneficiaries' meetings can be called in relation to the following and other matters:

- the election of trustees
- the presentation of accounts
- investments
- the purchase of additional land
- a major purchase, such as a woolshed
- mortgages
- variations to the terms of trust
- termination of the trust.

A beneficiaries' meeting must also be called if a requisition has been signed by the number of beneficiaries stated in the trust order.

⁴ The minimum number of members that must be present at a meeting to make proceedings valid.

Notice

Adequate notice must be given. For practical reasons, it is advisable that at least two to three weeks notice of a beneficiaries' meeting be given to all beneficiaries and trustees. Where possible, the trust should send a letter of notification about the meeting to each beneficiary and trustee. The trust should also place a notice about the meeting, with a meeting agenda, in a local newspaper.

Quorum

Some trust orders specify the quorum for beneficiaries' meetings. Where there is no quorum stated in the trust order, the Court needs to be satisfied that any orders it makes as a result of that meeting meet the following requirements:

- the owners have had sufficient notice
- the owners have had adequate opportunity to discuss and consider the matters
- there is a significant degree of support by the owners
- there are no objections that the Court deems to have merit.

Voting and proxies

Only beneficiaries can vote on proposed resolutions at beneficiaries' meetings. In most instances, the trust order sets out how voting shall take place. If the trust order doesn't state this, the meeting attendees should decide what they prefer.

Unless permitted in the trust order, proxy⁵ voting is NOT provided for and should not occur. However a beneficiary may formally appoint a power of attorney to exercise his or her rights as an owner.

Where the trust order specifically allows for voting by proxy, a beneficiary who cannot attend a meeting may authorise, in writing,

another person to vote on his or her behalf. This person must be at least 20 years old. The proxy form can be obtained from the trustees. Shares voted by proxy count towards the quorum requirements.

Unless it is otherwise stated in the trust order, the beneficiaries' voting does not bind the trustees. However, the voting gives the trustees a clear indication of the beneficiaries' wishes. The decisions of any meeting don't bind the Court either – the minutes and resolutions are merely evidence of the proceedings and the resolutions reached.

Administration of a trust

Trustees' authority

The terms of a trust, and the powers and limitations of the trustees, are set out in the trust order. This makes the trust order one of the most important documents for the trust, and each trustee should have a copy and be familiar with it. Some judges call it the trustees' "job description".

Other powers and limitations conferred on trustees by legislation include:

- Te Ture Whenua Māori Act 1993
- Trustee Act 1956
- Income Tax Act 2004
- Resource Management Act 1991
- Charitable Trust Act 1957
- Charities Act 2005.

Varying the terms of a trust

If the trustees want to review their powers, rights, and obligations, as set out in the trust order, they need the support of the beneficiaries, and so they need to hold a

meeting with them. Any changes agreed to at the meeting can be formalised by filing an application with the Māori Land Court to vary the trust order.

The Court must be satisfied that the beneficiaries have had sufficient notice of the application to vary the trust order, and sufficient opportunity to discuss and consider it. The Court must also be satisfied that there is a sufficient degree of support among the beneficiaries for the variation.

List of current beneficiaries

The Māori Land Court maintains up-to-date lists of beneficiaries. The trustees should request a copy of the list of beneficiaries before a meeting with them. However, the trustees must maintain the beneficiaries' contact details.

Annual report

Unless the trust order provides otherwise, the trustees must prepare annual reports. The trust order may require that a copy of the annual report be:

- filed in any Māori Land Court office along with the annual financial report
- presented to the beneficiaries at the next scheduled beneficiaries' meeting.

If trust meetings are not held annually, all the annual reports for the years leading up to that meeting must be presented.

Financial accounts

The trust must keep a record of all financial

transactions and prepare an annual financial report. The trustees or beneficiaries may access the accounts on request.

Audit of accounts

The trust order may require an audit of the accounts each year. Some trust orders require this only where the annual income⁶ for the trust is over \$10,000.

The trust order may require the trust to:

- file a copy of the audit report with any office of the Māori Land Court
- present the audit report to the beneficiaries at the next scheduled beneficiaries' meeting.

Accounts payable

The trustees must ensure that all the accounts and expenses for which the trust is responsible are paid in full.

Payments to trustees

The trustees may be entitled to the reimbursement of actual expenses for performing their duties as trustees, such as travel and administration expenses for trust meetings, provided this is allowed for in the trust order or authorised by the Māori Land Court.

The trustees can be employed by the trust or have an interest in any contract⁷ with the trust, but they must not vote or participate in discussions on any matter concerning their remuneration, terms of employment, or any contract in which they may be interested.

5 The authority given by an owner of an interest in land to another person to vote on their behalf.

6 Money that is derived from assets held and earnings (such as rent and interest) but no "purchase money" (land converted onto money).

7 An agreement between two parties that is intended to be enforceable at law. Contracts are usually written, but a spoken agreement can also be a contract.

Income

After payment of all trust accounts and expenses, the trustees may use the surplus income as set out in the trust order. This may include:

- paying the running expenses of the trust
- distributing the money to the beneficiaries
- making investments
- developing the trust assets
- purchasing land and buildings
- paying goods and services tax (GST).

Trusts are separate legal entities and must each have their own Inland Revenue Taxpayer Number. Trusts may be required to register for GST with the Inland Revenue Department. For assistance with this, the trustees should go to the Inland Revenue website (www.ird.govt.nz/online-services/keyword/advice-assistance/online-business-advisory-visit.html) and ask a Kaitakawaenga Māori or Community Compliance Officer to get in touch. The advisory service is free and has been established to help meet the needs of Māori individuals, organisations and businesses.

Administering the trust

Trustee liability

The trustees are liable, both collectively and individually, for the trust property and the assets of the trust.

The beneficiaries can sue trustees for any loss caused by improper or negligent acts, by applying to the Māori Land Court or to the High Court. However, in terms of section 227(6) of the Act, any trustee whose vote is recorded as against a decision that eventuates in such a loss will not be liable.

The Māori Land Court regards any breaches of trust as a very serious matter, and trustees who are found to be at fault can expect to be made to pay for any losses that they have caused.

Signing documents

The trustees may be required to sign leases, mortgages, or other documents relating to the trust. Where there are three or more trustees, they may act by majority unless the trust order provides for all the trustees to act unanimously (see section 227 of the Act).

If an individual trustee does not agree with the proposal passed by a majority, he or she does not have to sign it. To avoid liability, the individual should immediately advise the other trustees and the Māori Land Court in writing.

Land Information New Zealand (formerly the Land Transfer Office) requires that for a document to be eligible for registration, all the trustees must sign it.

If a document requires the signatures of all trustees and a majority have resolved that it should be signed then all must sign. If a trustee disagrees he/she can have their opposing vote recorded. If a trustee feels strongly that the document should not be signed then application should be made to the Māori Land Court for directions. A trustee who refuses to sign it without making such an application could be in a very awkward situation if the trust suffers losses as a result.

Enforcement of obligations

The Māori Land Court has the power to enforce the trustees' obligations in regard to the trust. The Court can require a trustee to make a written report on the

trust's administration or the trustees' performances of their duties. A trustee may also be required to appear before the Māori Land Court for questioning about the report.

Investments

In order to fulfill their key duty of maximising the assets and minimising the liabilities of the trust to the best of their ability and within the law, trustees may invest trust funds in various ways. Investments must be made in accordance with the terms of the trust order and the Trustee Act 1956 and its amendment of 1988.

The government does not guarantee investments. Trustees who invest trust funds must be prudent when investing and seek expert financial advice.

More information

For more information about trustees' duties 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.maorilandcourt.govt.nz

Māori Land Court offices

Taitokerau District

Registry Office
L2, Manaia House, Rathbone Street
WHANGĀREI 0110
DX Box AX10086, WHANGĀREI
T (09) 983 9940
F (09) 983 9941
E mlctaitokerau@justice.govt.nz

Auckland Information Office

65B Main Highway, Ellerslie
AUCKLAND 1051
DX Box EX10912, AUCKLAND
T (09) 279 5850
F (09) 279 5852
E mlctamakimakaurau@justice.govt.nz

Waikato-Maniapoto District

Registry Office
L2, BNZ Centre, 354 Victoria Street
HAMILTON 3204
DX Box GX10101, HAMILTON
T (07) 957 7880
F (07) 957 7881
E mlcwaikato@justice.govt.nz

Waiariki District

Registry Office
Hauora House, 1143 Haupapa Street
ROTORUA 3204
DX Box JX10529, ROTORUA
T (07) 921 7402
F (07) 921 7412
E mlcwaiariki@justice.govt.nz

Aotea District

Registry Office
Ingestre Chambers, 74 Ingestre Street
WHANGANUI 4500
DX Box PX10207, WHANGANUI
T (06) 349 0770
F (06) 349 0771
E mlcaotea@justice.govt.nz

Tākitimu District

Registry Office
L2 Heretaunga House
Cnr Lyndon and Warren Street
HASTINGS 4122
DX Box MX10024, HASTINGS
T (06) 974 7630
F (06) 974 7631
E 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
T (06) 869 0370
F (06) 869 0371
E mlctairawhiti@justice.govt.nz

Te Waipounamu

Registry Office
30 Sheffield Crescent, Burnside
CHRISTCHURCH 8053
DX Box WX11124, CHRISTCHURCH
T (03) 962 4900
F (03) 962 4901
E mlctewaipounamu@justice.govt.nz

National Office, Office of the Chief Registrar, Māori Appellate Court

L7, Fujitsu Tower, 141 The Terrace
WELLINGTON 6011
DX Box SX11203, WELLINGTON
T (04) 914 3102
F (04) 914 3100
E mlcnationaloffice@justice.govt.nz

Use the X number as you would a PO Box number.