

SUCCESSION

Te Kooti Whenua Māori – Māori Land Court

For more information, go to maorilandcourt.govt.nz

Te Kooti Whenua Māori – Māori Land Court (MLC) is the New Zealand Court that hears matters relating to Māori land. The unique relationship between Māori and whenua is recognised by the MLC and the records held by the Court form an invaluable part of the whakapapa of all Māori people. The MLC operates under the provisions of 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 title¹. When an owner dies, it's important to transfer their interests to the person or people entitled to receive those interests – the successors². 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 MLC issues a succession order⁶.

1. The 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.

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

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).

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:

- searching the Māori Land Online database. **Go online to** maorilandonline.govt.nz
- visiting or contacting the MLC and searching their database. See the back page of this factsheet for contact details or **go online to** maorilandcourt.govt.nz/contact-us

Searching Māori Land Court records

Before a search, get as much information about the deceased as possible. This will help the MLC determine all 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 siblings' 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

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.

- money held by the Māori trustee (or any other agent, trustee¹⁰ or Māori incorporation¹¹) for the deceased derived from Māori land
- interests in Tītī Islands
- interests in the Wi Pere Trust
- ōta whakanoho (occupation order¹²).

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 tenants¹³)
- 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 file a completed application form with an MLC office by either visiting an MLC office, attending one of our offsite clinics, or sending it by post. See the back page of this factsheet for contact details or **go online to** maorilandcourt.govt.nz/contact-us

You can get an application form from an MLC office or you can download one from our website at maorilandcourt.govt.nz/apply/fees-and-forms

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.

Along with your application form, you will need:

- the original death certificate or a copy
- the original will¹⁴ or a certified copy of the will
- the original grant of administration, if any, or a certified copy
- the application fee (the amount is noted on the form).

At the same time as applying for succession, you can apply to establish a whānau trust¹⁵. You need to send both applications at the same time.

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 them as trustee for the land is registered against the title. The beneficiaries are called the beneficial owners.

11. An administrative structure similar to a company for managing Māori land vested in it by the Māori Land Court.

12. An order issued by the Court allowing an owner to exclusively occupy a certain part of any Māori land in which they have interests.

13. People who own land jointly. The interests are not split between them – they are co-owners. If one owner dies, the other joint tenant(s) automatically succeed to the interest that the deceased joint tenant held. This kind of ownership is most commonly used by married couples, who often prefer to own property as joint tenants. Where general land is owned by more than one person, it is deemed to be held by them jointly unless the title states otherwise.

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

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

Hearing your application in court

If your application is scheduled for a court hearing, you should attend the hearing. If you can't attend, arrange for a family member to attend to answer any questions from the judge, or you may need to instruct a solicitor. The application may be heard in the district where the land is situated or you can request to have the hearing at a location closer to you. Talk to MLC staff about attending a hearing online.

Simple and uncontested successions

Not every succession application needs to be heard by a judge in a court hearing – succession applications that are 'simple and uncontested' can be decided by an MLC registrar without a hearing.

When received, your application will be reviewed to assess whether it is 'simple' (that is, relatively straight-forward with no complicating factors). If it is and no one objects to your application, it can be decided by a registrar. If you would prefer your application to be heard by a judge in court, you can indicate this on the application form. If at any stage your application is considered to no longer be simple or uncontested, it will be heard by a judge. For more information go to maorilandcourt.govt.nz/apply/simple-and-uncontested

Previous legislation

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, the succession case will be dealt with under legislation of that time (pre-dating Te Ture Whenua Māori Act 1993).

Entitlement to succession under the Act

When the deceased does not have a will (that is, they are intestate), succession to Māori land and Māori incorporation shares will be in accordance with the Act:

- 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 siblings are entitled to their interests. Any half-siblings are entitled to share only in interests that the deceased obtained from their common parent.
- If the deceased has no siblings, it will be necessary to find out where the interests came from and from that whakapapa 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.

Surviving spouse or partner

From 6 February 2021, a surviving spouse, or civil union or de facto partner, of the deceased with no whakapapa links to the land may not succeed to that land interest. The deceased's children or next in line to succeed can apply to succeed to the land instead.

However, the surviving spouse or partner is entitled to receive income from the land and/or occupy the family home on the land until such time as they pass away; or voluntarily give up the rights; or (when there is no will) marry or enter a new civil union or de facto relationship; or (when there is a will) the time specified ends.

When these income and occupation rights end, these rights will go to those who succeeded to the land interest.

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 kaitiaki¹⁶ trustee to act for the child until they are 20 years of age or marry, whichever is sooner. For more information, **go online to** maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations

Whāngai

As prescribed by the Act, judges will follow the tikanga¹⁷ of the hapū¹⁸ or iwi¹⁹ associated with the land when deciding whether whāngai²⁰ can succeed to a land interest. Where the relevant tikanga does not recognise a relationship that entitles the whāngai to succeed, a judge may issue a court order²¹ giving the whāngai a right to receive income or grants from the land or the right to occupy the family home on the land, or both.

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 rent or interest) can be used to pay debts. The estate trustees can sell the land if beneficiaries²² 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 their Māori land interests or Māori incorporation shares by will but only to the people set out in the Act:

- children or descendants
- siblings (but half-siblings may only receive interests that the testator²³ 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 landowners who are members of the hapū associated with the land
- whāngai of the testator (in accordance with appropriate tikanga)
- trustees of any of the above.

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 MLC will determine who should succeed to the land based on law.

The Court can decide that other people not included in the above list be given rights to income from the land or to occupy the family home. They could be a spouse, partner, whāngai, stepchild or someone who the deceased may have felt a moral obligation to make provision for.

The will

Personal representative

When there is a will, the personal representative (executor²⁴) usually applies to the High Court for probate²⁵ and then administers the estate. The personal representative is responsible for making sure 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 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).

23. One who makes a will.

24. A person appointed to carry out certain duties under the last will of a deceased person. The deceased will have named the executor in their 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 requires this (see page 2). When an executor is confirmed by the High Court, that court issues probate in their favour. (If the will does not name an executor, then the person who is appointed by the High Court to administer the estate is called an administrator).

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

16. In the context of a trust, a guardian of a minor or person unable for any reason to fully manage their own affairs.

17. Māori custom.

18. A subtribe or kin group that is linked by a common ancestor.

19. The traditional Māori tribal hierarchy and social order made up of hapū (kin groups) and whānau (family groups), having a founding ancestor and territorial (tribal) boundaries.

20. The traditional Māori practice where a child is raised by someone other than their birth parents.

21. A formal document, signed by a judge or senior court official and stamped with the court's official seal, to give effect to a decision of a judge of the court.

22. Owner(s) of shares of land held within a trust. Beneficiaries are also called the beneficial owners.

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 order in favour of the beneficiaries.

Contesting the will

If you want to contest²⁶ a will, you can apply under the Family Protection Act 1955. If the application relates only to Māori freehold land, you must apply to the MLC. For any other application, you can apply to the Family Court or High Court. 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 disability²⁸, you have two 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.

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.

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. For more information, **go online to** maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations

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.

For more information about the Māori trustee, **go to** tetumupaeroa.co.nz

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

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, greatgrandchildren) 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 the Māori Purposes (Wi Pere Trust) Act 1991 override the provisions of the Adoption Act 1955.)

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

26. To dispute or challenge a will through the High Court.

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

28. In its legal use, this means 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.

More information

To find out more about succession, **go online to** maorilandcourt.govt.nz

Or you can visit your local MLC or attend an offsite clinic. We have nine offices across Aotearoa New Zealand, which are open between 10am and 4pm on normal weekdays. You don't need to make an appointment. Contact details follow or **go online to** maorilandcourt.govt.nz/contact-us

Contact the Māori Land Court

The DX number is the postal address.

Taitokerau District	Level 3, 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, Ellerslie Auckland 1051 DX Box EX10912, Auckland Phone 09 279 5850 Email mlctamakimakaurau@justice.govt.nz
Waikato-Maniapoto District	Level 2, BNZ Centre 354 Victoria Street, Hamilton 3204 DX Box GX10101, Hamilton Phone 07 957 7880 Email mlcwaikato@justice.govt.nz
Wairiki District	Hauora House 1143 Haupapa Street, Rotorua 3204 DX Box JX10529, Rotorua Phone 07 921 7402 Email mlcwaiariki@justice.govt.nz
Aotea District	Ingestre House 74 Ingestre Street, Whanganui 4500 DX Box PX10207, Whanganui Phone 06 349 0770 Email mlcaotea@justice.govt.nz
Tākitimu District	Hastings District Court, 106 Eastbourne Street West, Hastings 4122 DX Box MX10024, Hastings Phone 06 974 7630 Email mlctakitimu@justice.govt.nz
Tairāwhiti District	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 District	Level 1, CJESP 20 Lichfield Street, Christchurch 8011 DX Box WX11124, Christchurch Phone 03 962 4900 Email mlctewaipounamu@justice.govt.nz
Office of the Chief Registrar/ Specialist Applications Team	Level 7, Fujitsu Tower 141 The Terrace, Wellington 6011 DX Box SX11203, Wellington Phone 04 914 3102 Email mlc.chief-registrars.office@justice.govt.nz

