

TRUSTEES' ROLE AND DUTIES

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').

Trustees¹ are bound by Te Ture Whenua Māori Act and the Trusts Act 2019. Both Acts set out duties and responsibilities of trustees.² A trustee's key role is to maximise the assets and minimise the liabilities of the trust to the best of their ability and within the law. Trustee powers, rights and obligations are set out in the trust order³. An elected trustee formally becomes a responsible trustee when the Court has granted an order of appointment.

General functions of a trustee

Te Ture Whenua Māori Act requires that every person who is appointed as a responsible trustee must carry out the:

- terms of the trust
- proper administration and management of the business of the trust
- preservation of the assets of the trust
- collection and distribution of the income of the trust.

Subject to what the Court sets out in the trust order, trustees should have all such powers and authorities necessary for the effective management of the trust and the achievement of its purposes.

Duties of a trustee

The Trusts Act is the first significant overhaul of trust legislation in Aotearoa New Zealand in 70 years. The Trusts Act specifies a range of duties that trustees must carry out – these are divided into mandatory and default duties.

MANDATORY DUTIES OF A TRUSTEE

These duties are not optional.⁴ They must be performed by a trustee and cannot be modified or excluded by the terms of the trust. A trustee has a duty to:

- Know the terms of the trust
- Act in accordance with the terms of trust

1. Persons 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.

2. For information on trustees' duties and responsibilities see Part 3 of the Trusts Act 2019 and Part 12 of Te Ture Whenua Māori Act 1993.

3. Common term for a trust order is a trust deed, which is the term used in the Trusts Act 2019.

4. Sections 23 to 27 of the Trusts Act 2019.

- Act honestly and in good faith
- Act for the benefit of beneficiaries⁵ or to further the purpose of the trust
- Exercise powers for a proper purpose

DEFAULT DUTIES OF A TRUSTEE

Default duties⁶ apply to all trustees, unless they are modified or excluded by permitted variations to the trust order. In other words, they apply 'by default' unless they have been explicitly amended or varied in the trust order. The default duties are:

- **General duty of care**

When administering a trust, a trustee must exercise care and skill that is reasonable in the circumstances, taking into consideration any special knowledge or experience that they have, and any special knowledge or experience that it is reasonable to expect of a person acting in the course of their profession or business.

- **Invest prudently**

When exercising any power to invest trust property, a trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard to any special knowledge or experience that they have, and any special knowledge or experience that it is reasonable to expect of a person acting in the course of their profession or business.

- **Not to exercise power for own benefit**

A trustee must not exercise a power for their own direct or indirect benefit.

- **Consider exercise of power**

A trustee must actively and regularly consider whether they should be exercising one or more of their powers.

- **Not to bind or commit trustees to future exercise of discretion**

A trustee must not act in a way that commits trustees in future to exercising or not exercising a discretion.

- **Avoid conflict of interest**

A trustee must avoid a conflict with the interests of the beneficiaries.

- **Impartiality**

A trustee must act impartially in relation to the beneficiaries. They must not be unfairly partial to one beneficiary or group of beneficiaries to the detriment of the others. This does not mean a trustee must treat all beneficiaries equally, but all beneficiaries must be treated in accordance with the terms of the trust.

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

6. Sections 28 to 39 of the Trusts Act 2019.

- **Not to profit**

A trustee must not make a profit from the trusteeship of a trust.

- **Act for no reward**

A trustee must not take any reward for acting as a trustee, but has the right to be reimbursed for legitimate expenses and disbursements in acting as a trustee.⁷

- **Act unanimously**

If there is more than one trustee, the trustees must act unanimously.

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
- ensure that the MLC 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 they must also perform their duty as a responsible trustee. If the secretary is not a trustee, they 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, they should still perform their 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 may act by majority (section 227 of Te Ture Whenua Māori Act). The minimum quorum⁸ for any trust meeting must be more than half of the appointed responsible trustees and any decision must be agreed by more than half of all trustees (not just those present at a meeting).

⁸ The minimum number of members that must be present at a meeting to make proceedings valid.

⁷ See section 81(2) of the Trusts Act 2019.

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 Reservations Regulations 1994. This principle will only apply to other trusts if stated in the trust order.

ATTENDANCE

The trustees are obligated to attend all trust meetings. If a trustee is absent from three consecutive meetings without reason or apology, the MLC can remove the trustee. 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 free to invite other people to the meetings, where applicable. This may happen when the trust is seeking professional advice.

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.

GIVING 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, proxy⁹ voting is *not* provided for and should not occur. However, a beneficiary may formally appoint a power of attorney to exercise their 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 their 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.

Administering the 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
- Trusts Act 2019
- Income Tax Act 2007
- Resource Management Act 1991
- Charitable Trusts Act 1957
- Charities Act 2005.

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

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 MLC 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 MLC 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 MLC 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 income¹⁰ 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 MLC
- 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 MLC.

The trustees can be employed by the trust or have an interest in any contract¹¹ 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.

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 IRD number and, in some cases, may also be required to register for GST. For help with this, you can go to Te Tari Taake – Inland Revenue's website at ird.govt.nz/maori/land-trusts

The Kaitakawaenga Māori business service is free and has been established to help meet the needs of Māori individuals, organisations and businesses.

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 MLC 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 before it is implemented will not be personally liable.

The MLC 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, they do not have to sign it. To avoid liability, the individual should immediately advise the other trustees and the MLC in writing.

Toitū Te Whenua – Land Information New Zealand 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, they can have their opposing vote recorded. If a trustee feels strongly that the document should not be signed, then an application should be made to the MLC 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.

¹⁰ Money that is derived from assets held and earnings (such as rent and interest) but not 'purchase money' (land converted into money).

¹¹ 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.

ENFORCEMENT OF OBLIGATIONS

The MLC 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 MLC for questioning about the report.

INVESTMENTS

In order to fulfil 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 Trusts Act 2019.

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

More information

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

Or you can visit your local MLC office 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

TRUSTEE TRAINING

The MLC provides trustee training. Contact one of our local offices for more information.

Contact the Māori Land Court

The DX number is the postal address.

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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 mlcwaairiki@justice.govt.nz
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Tākitimu District	Hastings District Court, 106 Eastbourne Street West, Hastings 4122 DX Box MX10024, Hastings Phone 06 974 7630 Email mlctakitimu@justice.govt.nz
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