

Legislative changes affecting trusts

Effective from Waitangi Day, 6 February 2021

In August 2020, the Government passed targeted changes to Te Ture Whenua Māori Act 1993 to simplify the legal processes for owning, occupying and using Māori land.

Simple and uncontested trust matters

WHAT HAS CHANGED?

Historically, trust applications were heard by a Māori Land Court judge.

Now, if your application is assessed to be 'simple and uncontested', then it can be decided by a Māori Land Court registrar without a court sitting (unless you request to be heard by a judge in a court sitting).

If at any stage your application is considered to not be 'simple and uncontested' a registrar can refer it to a judge to be heard.

WHAT IS A 'SIMPLE AND UNCONTESTED' APPLICATION?

'Simple' trust applications have no complicating factors. Examples of what could be considered 'simple' trust matters include:

- forming a whānau trust for a single owner's interests or shares; or
- terminating a kaitiaki trust for a minor when the person reaches 20 years of age; or
- appointing a trustee to a whānau trust.

Your application will be considered 'uncontested' when:

- it has been notified according to the Māori Land Court Rules; and
- it has been published in the Māori Land Court's National Pānui; and
- no one has objected to the application.

WHY MAKE THIS CHANGE?

The time and travel costs associated with attending a court sitting are removed when an application can be decided by a registrar.

This approach also supports the efficient running of the Māori Land Court.

WHAT DO I NEED TO DO?

The process for applying for succession has not changed. Apply by completing the appropriate application form. Forms are available at Māori Land Court offices or on our website.

For office contact details, go to

www.maorilandcourt.govt.nz/contact-us

To download a form from our website, go to

www.maorilandcourt.govt.nz/apply.

If you prefer your application be decided in court by a judge, tick that option on the application form.

It is important to include all relevant information in your application.

You will also need to provide evidence you have notified beneficiaries or owners and have any consents to the application that are required.

When we roll out our new technology system, you will be able to make this application online via the Māori Land Court website. Check our website to see whether online applications are available at the time you make your application.

CAN A REGISTRAR'S DECISION BE REVIEWED?

Yes, you can apply for a review of a registrar's decision within 20 working days of the decision being made (or longer if you have a good reason).

The review will be done by a judge, who will be able to confirm, change or cancel the decision and issue a court order.

Updated provisions for removing a trustee

The Act now allows for the Māori Land Court to remove a trustee if it is satisfied that they have lost the capacity to perform their functions as a trustee, or that their removal is desirable for the proper execution of the trust (for example because they repeatedly refuse or fail to act as a trustee, they become an undischarged bankrupt, or they are no longer suitable to hold office as trustee because of their conduct or circumstances).

Aligning trust procedures to changes in the Act

You should update your procedures as necessary to reflect the changes to Te Ture Whenua Māori Act 1993.

For example, you will need to be able to record that a surviving spouse is entitled to income from a land interest that they do not own, and that some owners are not entitled to the income from their land interest.

You also need to update your records when a surviving spouse passes away or remarries and income rights pass to the successors, similar to the current process when life interests end.