

TRANSFERRING MĀORI LAND SHARES

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').

This factsheet deals only with the transfer of shares held in land that has multiple ownership (that is, undivided shares). For information about granting confirmation of an instrument of alienation¹ or about transfers of whole blocks of Māori land, please contact an MLC office.

Use of vesting orders

Except when Māori land² is vested³ in a Māori incorporation⁴, Māori land shares can only be transferred by a vesting order⁵ made by the MLC. For this reason, you must apply to the MLC for a vesting order if you want to transfer your shares to someone else.

If you want to sell or gift your shares, and those shares form part of Māori land vested in a Māori incorporation, you must file a transfer application with the secretary of the Māori incorporation.

A vesting order can be used to transfer Māori land shares:

- from one person to another on the sale or gift of the shares
- to the trustee(s)⁶ of the landowners
- from a trustee, or representative, to the person beneficially entitled to the shares
- to provide a dwelling site for an owner
- between owners to facilitate a partition of the land.

1. Alienation is when landowners grant certain rights of their land to another person. For example, selling land gives the new owner the ownership rights; leasing land gives the lessee a limited right to occupy land in return for payment of rent (and other conditions); mortgaging land gives the mortgagee the right to sell the land if the mortgage is not repaid (refer to section 4 of Te Ture Whenua Māori Act 1993). Alienation involves an alienee (the person who purchases or receives the interest in the land) and an alienor (the person who sells or parts with the interest in the land).

2. Land whose beneficial ownership the Māori Land Court has determined by freehold order (that is, the Court has created a title for the land and determined the beneficial owners to that land). Freehold titles are often divided by partition order. The land retains the status of Māori land. The status of the land will continue to be Māori land unless and until the Māori Land Court makes an order changing the status of the land.

3. 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.)

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

5. An order of the court that vests land interests in someone other than the existing owner(s), therefore affecting the ownership.

6. 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.

People entitled to receive Māori land shares or interests

Māori land shares can only be sold or gifted to certain people who belong to a group defined in the Act as the preferred classes of alienees.

The Act recognises that blocks of Māori land are generally owned by people connected to each other and to the land through kin groups, such as iwi⁷ and hapū⁸. In order to preserve the kin groups, the Act restricts the type of people to whom land can be sold or gifted. These people can be:

- the owner's children or direct descendants
- any whanaunga of the owner who, in accordance with tikanga Māori⁹, are associated with the land
- the other beneficial owners¹⁰ of shares in the same land who are members of the hapū associated with that land
- the trustees for any of the people referred to above
- anyone descended from a former owner of the land who is, or was, a member of the hapū associated with that land.

Transferring shares

TRANSFERRING SHARES AS A SALE OR A GIFT

You can only transfer Māori land shares by a sale or a gift with a vesting order, unless the MLC agrees to confirm a memorandum of transfer. A memorandum of transfer is generally only used if the land is solely owned or if all of the owners are joining in the sale.

TRANSFERRING SHARES TO TRUSTEES

Māori land shares can be transferred, by a vesting order, to a trustee from a person who owns, or is entitled to own, Māori land shares.

TRANSFERRING SHARES FROM TRUSTEES OR REPRESENTATIVES

Māori land shares can be transferred, by a vesting order, from a trustee or representative for someone else to the person who is entitled to be the beneficial owner.

TRANSFERRING SHARES TO FACILITATE PARTITION

If owners of Māori land shares agree or arrange to allot shares on a partition, the MLC may make a vesting order to give effect to the agreement. Section 164 of the Act applies.

7. 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.

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

9. Māori custom.

10. The owner of a beneficial interest in land. Where land is vested in trustees, the trustees own the land as legal owners on behalf of the beneficiaries. The beneficiaries hold their individual shares in the land as beneficial owners.

Selling shares

If Māori land shares are sold, the Court cannot sign or seal a vesting order unless it is satisfied that the money has been paid to the alienor¹¹, to the Māori trustee or to the court-appointed agent or trustees. A certificate, signed by the Māori trustee or the court-appointed agent or trustee or the alienor, that the money has been paid, is sufficient evidence to satisfy the Court.

Applying for a vesting order

You must apply to the MLC for a vesting order. You can apply if you are:

- the owner of the Māori land shares to be transferred
- the person who will receive the Māori land shares
- a trustee for either of the people mentioned above.

The applicant, or counsel for the applicant, must sign the application for the vesting order.

Information required

An application for a vesting order must:

- state the relationship between the parties
- be accompanied by a whakapapa or other documentary evidence necessary to establish that the transferee belongs to one or more of the preferred classes of alienees.

If the application involves a contract¹² or an arrangement relating to the proposed transfer, then the contract or a written agreement between the parties must be filed with the application.

Unless the Court directs otherwise, the following items must also be filed with the application:

- a certified copy of the entry in the district valuation roll for the land in which the shares to be vested are held, or
- a valuation of that land by a registered public valuer
- a valuation of all or any other assets attached to the land.

Where a vesting order is sought to gift Māori land shares that have a value of over \$2000, the owner of the shares will need to give evidence, either in Court or in a written affidavit¹³ or declaration, to support the application.

There is a standard application fee for a vesting order. Please ask your local MLC office about this fee.

The court hearing

The vesting order application will be considered at an MLC hearing. The owner of the shares or interests being transferred should attend. Any person who is entitled, or will be entitled, to a beneficial interest in the land is entitled to appear and to be heard at the hearing.

Granting a vesting order

Before granting a vesting order to transfer shares or interests, the MLC must be satisfied that:

- any instruments of alienation have been executed and attested (that is, signed and witnessed) in the manner required by the Rules of the Court. The people entitled to act as witness to the signing are set out in the application form
- the transfer is not in breach of any trust¹⁴ that manages the land
- the value of the shares or interests takes into account the value of all buildings, fixtures, crops, trees, minerals and other assets or funds relating to the land
- the value of the shares and interests takes into account the relationships or special circumstances of the parties
- the purchase money, if any, has been paid to the alienor or to the Māori trustee or to the court-appointed agent or trustees.

In recognition of the principles of the Act that land is taonga tuku iho, of special significance, and to promote the retention of the land in the hands of its owners and their whānau and hapū, the judges usually require that an owner wishing to gift or sell an interest first consult with their children and whānau.

Māori incorporation shares

Māori incorporation shares are deemed, for all purposes, to be shares in Māori land held by the incorporation but the legislation dealing with their transfer is in section 264 of the Act.

Share registers

The Māori incorporation is required to establish a share register, an official record of the shareholders. The share register must list the shareholders' names and addresses and the shares held by each shareholder.

The secretary for the Māori incorporation maintains the share register by recording any vesting orders processed by the MLC.

Transferring Māori incorporation shares

You may transfer your Māori incorporation shares provided that:

- the shares to be transferred do not result in a shareholding less than any minimum set by the Māori incorporation
- the shares are being transferred to a member of the preferred classes of alienees.

As a final alternative, the shares can be offered to the Māori incorporation if no members of the preferred class accept the shares.

11. The person who sells or parts with the interest in the land.

12. 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.

13. A written statement that is signed and sworn on oath and therefore able to be used as evidence in court.

14. An obligation binding the trustee(s) to deal with property over which they have control (the trust property) for the benefit of the beneficiaries.

To transfer Māori incorporation shares, the transferor (the person transferring the shares) must file a transfer of shares form (form 5 of the Māori Incorporations Constitution Regulations 1994) with the secretary of the Māori incorporation. The following information is required on the transfer form:

- the transferor's name and address
- the number of shares to be transferred
- whether the transfer is a sale or a gift
- if the shares are being sold, what the price is
- the name, occupation, address and date of birth of the transferee (the person receiving the shares).

The form must be signed by the transferor and witnessed by one other person. The witness must state their address and occupation.

Committee of management

The Māori incorporation's committee of management is responsible for registering the transfer against the incorporation's share registration, but may refuse to register if they are not satisfied that the transferee is a member of the preferred classes of alienee, or if the transfer is not properly completed.

More information

To find out more about transferring Māori land shares, **go online to** maorilandcourt.govt.nz

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

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 mlcwaairiki@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