

Whānau Trusts

February 2013

Introduction

While hearing succession applications I often find myself suggesting to those appearing in front of me to consider forming a whānau trust. I stress that a whānau trust is designed to manage specified shares in Māori land, it facilitates the bringing together of interests for the benefit of descendants and most importantly is a valuable tool to prevent ongoing fragmentation or, more correctly, fractionalisation of shares.

Having said that, I have often wondered if the rhetoric matches the reality. I turn to my own personal experience in creating a whānau trust to consider this further.

Background

As a youth and young adult I became aware that on my mother's side our family had Māori land interests in the King Country and Whanganui areas. There was also whānau discussion about land interests in the Rangitīkei area. My mother was one of eleven siblings, all of whom had a little bit of knowledge of their Māori land interests but nothing too specific. One uncle indicated that he had been appointed the family "administrator" in 1967, but other than that the knowledge was pretty scanty.

As happens, most of my uncles and aunties eventually passed away. In 2003, realising that there was only one uncle and one aunty still alive, something needed to be done. After Part 4 searches had been carried out at the Māori Land Court I learnt that in 1967 an uncle of mine had appeared at the Māori Land Court and had succeeded to some interests in the name of his mother and father (my grandparents). All his brothers and sisters had agreed at the time that the intention was that he would hold those shares as a type of whānau administrator.

I went on to discover however that at the time those succession applications were made, various Māori land interests had not been identified by the Court and were not included in the 1967 orders. Land interests remained in the name of my grandfather and my great-grandmother. More problematic was that in the early 1970s there had been further succession orders in relation to interests not dealt with in 1967. At that time the Judges hearing those applications were not aware that there had been the previous applications in 1967 and that it had been intended to vest all interests into one person. Without that knowledge the Court then vested interests into various uncles and aunties, without their agreement or knowledge. Thus in 2003 the situation that confronted me was that there were Māori land interests held by: a great-grandmother (deceased); two grandparents (deceased); one uncle (the

“administrator”); myself and two brothers, with the balance of the interests spread throughout my remaining aunties and uncles, eight of whom were by then deceased. All of which was, I might say, a not uncommon scenario in the Māori Land Court.

The Formation of the Trust

The next step I took was to outline this information to whānau members at a hui held on Labour weekend 2003. What was really interesting was to hear comments from cousins of mine, many of them older than me, who had heard similar stories during their lifetime but who had never, for whatever reason, been able to verify the fact that we still had some Māori land interests. Support was given for the formation of a whānau trust.

An application to constitute a whānau trust was filed in 2004 and eventually heard in February of 2005. A whānau trust was formed at that stage with myself and two cousins being appointed as trustees. Initial lands vested into the whānau trust came from the uncle who had been appointed as the whānau administrator in 1967. Fortunately he was still alive and he agreed wholeheartedly to the formation of a whānau trust and to the named tūpuna being his parents.

I realised that further work needed to be done in relation to interests still held in the name of my great-grandmother and those interests which had been spread throughout my various aunties and uncles. Further succession applications were brought in relation to my great-grandmother and grandparents. I also filed two section 45 applications in relation to those succession applications which were made in the 1970s. I argued that the information that was put before the Court at that time was incorrect, on the basis that the Judges who heard those applications were not aware that there was an earlier succession application in 1967 where it was clearly intended that all interests were to be vested in one sibling.

The above information is a very truncated summary of what was involved. It was not until October 2010 that the final Court case was completed. By that time the various applications and Court cases had been running for over six years, until they were finally concluded in our favour.

Administration

The interests that are within our whānau trust are relatively small. They are in blocks which are situated in the Otorohanga area, around Taumarunui, blocks adjoining the Whanganui River, shares in the Morikaunui and Atihaunui Incorporations and blocks in the Marton area. Some administration of the whānau trust is required. An IRD number had to be obtained. We get a small amount of dividend payments each year and a tax return has to be prepared. Our trust order requires the trust to be reviewed every five years by the Māori Land Court. We tend to hold at least one AGM hui a year. Having made contact with the trustees of various ahu whenua trusts and the

administrators of incorporations we now regularly receive correspondence from those entities. Correspondence and reports received need to be disseminated amongst the trustees and whānau members and stored for safekeeping.

Further work still needs to be done. Not all of the trustees of the ahu whenua trusts have been contacted and further work is needed in that respect.

The Benefits

Notwithstanding the very lengthy amount of time it took to form the whānau trust and the ongoing administration, what have been the benefits of forming the whānau trust?

First, there has been a validation of the kōrero which existed amongst uncles and aunts. Second, although those interests are small they have been able to link us back into the various communities which our grandparents and great-grandparents had ties to. The Māori Land Court via its Māori Land Online website can now physically locate the blocks. GIS maps exist which confirm the location of the blocks. I have been able to travel to and view some of those blocks. Information from Māori Land Online also provides the names of various trustees of blocks in which we hold interests and contact has been made with some of them.

Another benefit has been a sense of cohesiveness amongst cousins of my generation. For so long we were blissfully unaware of where our whānau interests lay. Through further research I have been able to understand that interests previously held by my grandparents and great-grandparents had been compulsorily acquired by the Māori Trustee, taken for public works or sold. Of the lands that remain we have been able to use those as a basis for increasing the cohesiveness amongst our generation and they are a focal point for discussion at whānau hui. During recent whānau reunions it has been a privilege to be able to talk to various cousins and wider whānau members about these lands, where they are located and some of the history associated with them, all of which is usually eye-opening stuff for most of them.

There are some small financial benefits. We get the odd dividend here and there but nothing much to write home about. Some whānau members have been able to access scholarship grants. However the real benefit has been the intangible, that sense of connection and reconnection which I spoke about earlier.

I am very conscious from personal experience of the potential difficulties in forming a whānau trust. I have experienced those difficulties notwithstanding the fact that I was a practising lawyer and familiar with the workings of Te Ture Whenua Māori Act. The difficulty in forming a whānau trust multiplies with each generation that passes. However from my own personal experience the benefits are there and I would encourage persons, when bringing succession applications, to seriously consider the formation of a whānau trust.