



# TRANSFERRING MĀORI LAND SHARES

TETUREWHENUA MĀORI ACT 1993

*Te Kooti Whenua Māori*



*Māori Land Court*

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MINISTRY OF  
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The Māori Land Court (Te Kooti Whenua Māori) is the New Zealand court that hears matters relating to Māori land. The special bond between Māori people and the land is recognised by the Māori Land Court, and the records held by this Court form an invaluable part of the whakapapa of all Māori. The Māori Land Court operates under the provisions of Te Ture Whenua Māori Act 1993 (referred to as 'the Act' throughout this booklet).

*Transferring Māori Land Shares* is one of a series of Māori Land Court booklets designed to help Māori – and anyone else with an interest – to gain a fuller understanding of current Māori land matters. It is a comprehensive guide to transferring Māori land shares by a vesting order:

- when the ownership of a Māori land block is held in shares by a group of owners
- when a land block is vested in a Māori incorporation.

This booklet deals only with the transfer of shares held in land that has multiple ownership (ie undivided shares). For information about granting confirmation of an instrument of alienation<sup>1</sup> or about transfers of whole blocks of Māori land, please contact a Māori Land Court office (see page 6 for your nearest office).

## Use of vesting orders

Except when Māori land<sup>2</sup> is vested<sup>3</sup> in a Māori incorporation<sup>4</sup>, Māori land shares can only be transferred by a vesting order<sup>5</sup> made by the Māori Land Court. For this reason, you must apply to the Māori Land Court 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)<sup>6</sup> 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.

## 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 iwi<sup>7</sup> and hapū<sup>8</sup>. 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 Māori<sup>9</sup>, are associated with the land
- the other beneficial owners<sup>10</sup> 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 Māori Land Court 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 Māori Land Court may make a vesting order to give effect to the agreement. Section 164 of the Act applies.

## 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 alienor, 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 Māori Land Court 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<sup>11</sup> 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 contract<sup>12</sup> 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.

## Footnotes

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 the Act).

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

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.

Where a vesting order is sought to gift Māori land shares that have a value of over \$2,000, the owner of the shares will need to give evidence, either in Court or in a written affidavit<sup>13</sup> or declaration, to support the application.

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

## The Court hearing

The vesting order application will be considered at a Māori Land Court 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 Court hearing.

## Granting a vesting order

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

- any instruments of alienation have been executed and attested (ie 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 trust<sup>14</sup> 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 Māori Land Court.

## 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.

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 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, the occupation, the address, and the 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 his or her 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

For more information about transferring Māori land shares, please write to, phone, fax, email, or visit a Māori Land Court office. Staff will be pleased to assist you and discuss any matters with you.

[www.justice.govt.nz/maorilandcourt](http://www.justice.govt.nz/maorilandcourt)

11 A person's genealogy, or family tree, linking that person to a particular family and/or ancestor.

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.

# Māori Land Court offices

## Taitokerau District

Registry Office  
L2, Manaia House, Rathbone Street  
WHANGĀREI 0110  
DX Box AX10086, WHANGĀREI  
T (09) 983 9940  
F (09) 983 9941  
E mlctaitokerau@justice.govt.nz

## Auckland Information Office

65B Main Highway, Ellerslie  
AUCKLAND 1051  
DX Box EX10912, AUCKLAND  
T (09) 279 5850  
F (09) 279 5852  
E mlctamakimakaurau@justice.govt.nz

## Waikato-Maniapoto District

Registry Office  
L2, BNZ Centre, 354 Victoria Street  
HAMILTON 3204  
DX Box GX10101, HAMILTON  
T (07) 957 7880  
F (07) 957 7881  
E mlcwaikato@justice.govt.nz

## Waiariki District

Registry Office  
Hauora House, 1143 Haupapa Street  
ROTORUA 3204  
DX Box JX10529, ROTORUA  
T (07) 921 7402  
F (07) 921 7412  
E mlcwaiariki@justice.govt.nz

## Aotea District

Registry Office  
Ingestre Chambers, 74 Ingestre Street  
WHANGANUI 4500  
DX Box PX10207, WHANGANUI  
T (06) 349 0770  
F (06) 349 0771  
E mlcaotea@justice.govt.nz

## Tākitimu District

Registry Office  
L2 Heretaunga House  
Cnr Lyndon and Warren Street  
HASTINGS 4122  
DX Box MX10024, HASTINGS  
T (06) 974 7630  
F (06) 974 7631  
E mlctakitimu@justice.govt.nz

## Tairāwhiti District

Registry Office  
Ngā Wai e Rua Building  
Cnr Reads Quay and Lowe Street  
GISBORNE 4010  
DX Box PX10106, GISBORNE  
T (06) 869 0370  
F (06) 869 0371  
E mlctairawhiti@justice.govt.nz

## Te Waipounamu

Registry Office  
30 Sheffield Crescent, Burnside  
CHRISTCHURCH 8053  
DX Box WX11124, CHRISTCHURCH  
T (03) 962 4900  
F (03) 962 4901  
E mlctewaipounamu@justice.govt.nz

## National Office, Office of the Chief Registrar, Māori Appellate Court

L7, Fujitsu Tower, 141 The Terrace  
WELLINGTON 6011  
DX Box SX11203, WELLINGTON  
T (04) 914 3102  
F (04) 914 3100  
E mlcnationaloffice@justice.govt.nz

Use the X number as you would a PO Box number.