



Ngāi Tahu
Māori Law Centre

Our mission is to provide free legal service
to all members of our community



HE PUKAPUKA ĀWHINA

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SUCCESSION

Why should you file for succession?

- So the records of the Māori Land Court are kept up to date and current owners can be kept informed of any issues arising out of their Maori freehold land.

What you will need:

- Death Certificate – original or certified copy*
- Whakapapa*
- List of the relevant land interests*
- Will / Letters of Administration / Probate*
- List of brothers and sisters of the deceased
- List of the names, addresses, and dates of birth of all children of the deceased, including those who have died, and any adopted and whāngai
- Where children of the deceased have passed away, a list of the names, addresses and dates of birth of their children if any
- Payment of a filing fee. A Community Services card or SuperGold Card can be used to arrange a fee waiver

*We can assist in obtaining these items

Who can succeed?

No Will ('Intestacy')

- Children of the deceased, including those legally adopted in.
- Whāngai can also be included: whānau will be consulted and the Māori Land Court determines what share the whāngai will receive, if any.
- If one of the deceased's children has already died, their issue take in their place.
- If the deceased had no children, their brothers and sisters take their interests: Half siblings only get a share if the interests derive from a shared parent. If there are no siblings, the Māori Land Court will need to use whakapapa to trace the origin of the land to determine who is entitled.
- A surviving spouse or civil union partner is entitled to a life interest: this ends when they die, remarry, enter into a new civil union, enter into a new de facto relationship, or if a separation order exists. The spouse or civil union partner will receive only income from the land, not proceeds from any sale. They can surrender their interest to the rightful heirs at any time.

Will

Māori Land interests can be left by will to:

- Spouses, civil union partners or de facto partners – beneficial life interests only.
- Children, legally adopted children, whāngai, or other descendants.

- Brothers and sisters (for half siblings the interests must derive from the common parent).
- Anyone entitled to the interests via the whakapapa, or any blood relation of the hapū associated with the land.

This information applies to successions made under Te Ture Whenua Māori Act 1993 (TTWMA) we can give you specific advice on successions governed by previous legislation.

Tītī Islands

Interests in the Tītī Islands cannot be gifted in a Will. There are also no life interests. Only those descendants linked by direct bloodline are entitled to succeed.

MĀORI LAND TRUSTS

Overview

There are essentially five types of trusts that relate to Māori land which are set out in Te Ture Whenua Māori Act 1993 (TTWMA). The Māori Land Court has exclusive jurisdiction to constitute Māori trusts. These are:

i. *Ahu Whenua Trust*

Where one or more blocks of Māori land, or General land owned by Māori, is vested by the Māori Land Court in a trustee or trustees to promote and facilitate the use and administration of the land in the best interests of the beneficial owners.

ii. *Whanau Trust*

Where one or more interests in Māori land, General land owned by Māori, or shares in a Māori Incorporation are vested by the Māori Land Court in a trustee or trustees for the benefit of all descendants of a named tipuna.

iii. *Kai tiaki Trust*

Where any real or personal property, including Māori land and shares in a Māori Incorporation, owned by a disabled or under-aged Māori person, is vested by the Māori Land Court in a trustee or trustees for the benefit of the disabled or under-aged owner.

iv. *Putea Trust*

Where any interest in Māori land, or General land owned by Māori, or shares in a Māori Incorporation, is vested by the Māori Land Court in a trustee for ‘Māori community purposes’.

v. *Whenua Tōpū Trust*

Where interests in Māori or General land owned by Māori are constituted as a trust if the Court is satisfied that the constitution of the trust would promote and facilitate the use and administration of the land for “Māori community purposes” in the interests of the iwi or hapū named in the order.

i. AHU WHENUA TRUST

Effects

- The legal title to the Māori land vests in the trustee(s)
- The owners remain beneficial or equitable owners of the land as tenants in common – Their interests can be sold or gifted within the limits set out in TTWMA
- Succession to the interests of deceased owners continues

- Where there is an Ahu Whenua Trust over a block of land, individual shareholdings can still be vested into Whānau Trusts

Creation

The following information is required when forming an Ahu Whenua Trust:

- A description of the land involved
- Title information including a search copy of a Land Transfer Act certificate of title, if one exists
- Ownership information for the land
- The names and method of selection of the proposed trustees (for example by a vote at a meeting of owners)
- The reasons for formation of the trust, and the purpose for which trust income is to be applied
- Consent forms completed by the proposed trustees
- Details and evidence of notice provided to owners about the meeting regarding forming the trust
- A copy of minutes of the meeting of the owners, if one was held
- Payment of a filing fee. A Community Services card or SuperGold Card can be used to arrange a fee waiver

ii. WHĀNAU TRUST

Effects

- The interests of a living or deceased owner or owners are vested in trustees
- All descendants of a named Tipuna become beneficiaries of the Whānau Trust
- No further succession to, or fragmentation of, those interests occurs
- Interests in land and shares in incorporations become the property of the trustees to be held for the purposes specified in the trust order

Creation

The following information is required when forming a Whānau Trust:

- Details of the interests in land or shares in Māori incorporations involved
- Details of any other assets to be vested (such as General land)
- Details of the purposes that are to be included as an object of the trust
- Names and consents of those nominated as trustees, and details of how they were selected (for example by a vote at a meeting of owners)
- If the application is for a whole of a block of land; a list of all the beneficial owners and their addresses
- Consent from all owners vesting their interests into the Whānau Trust

- Where application to form a Whānau Trust is made as part of a succession, a Certified Copy of Probate and the Will of the deceased
- Payment of a filing fee - A Community Services card or SuperGold Card can be used to arrange a fee waiver

iii. **WHENUA TŌPŪ TRUST**

Effects

- A Whenua Tōpū trust promotes and facilitates the use and administration of the land vested in the trust in the interests of the iwi or hapū
- A Whenua Tōpū trust is very similar to an Ahu Whenua trust, because both are land management trusts involving whole blocks of land
- The difference between this trust and an Ahu Whenua trust is that the land, money and any other assets of a Whenua Tōpū trust must be held for Māori community purposes, or for such community purposes that the Court may specify
- Unlike an Ahu Whenua trust, a Whenua Tōpū trust does not hold a list of specified beneficiaries, as it is an iwi or hapū-based trust

Creation

Every application to constitute a Whenua Tōpū trust must include:

- A description of the land involved
- The names of the persons or body of persons to be appointed trustees
- The Māori community purposes for which the land, money, and assets of the trust are to be applied
- Explanation of the reasons for application
- Details and consents of nominated trustees
- Schedule of ownership information for the land
- Schedule of title information such as the certificate of title of the land
- Details and evidence of notice provided to owners about the meeting regarding forming the trust
- Minutes of any meeting where a resolution to vest the land in the trust was carried
- Payment of a filing fee - A Community Services card or SuperGold Card can be used to arrange a fee waiver

iv. KAI TIAKI TRUST

Effects

- A Kai Tiaki trust facilitates and protects the interests of an individual who is unable to manage their own affairs: such as a minor, or a person with a disability
- The person whose assets are vested in the trust cannot exercise any power over the assets while the trust exists
- However, provided that testamentary capacity is present, that person can bequeath the assets by Will, within the parameters of Te Ture Whenua Māori Act 1993

Creation

In order to constitute a Kai Tiaki trust, the Court requires:

- Particulars of the interests to be vested in the trust
- Particulars of the disability of the person beneficially entitled to the property
- Name(s) and consent(s) of persons to be appointed trustee(s)
- Details of any particular powers that the trustee(s) may seek to exercise in respect of the trust property (for example the power to vest interests into a Whānau Trust)

v. PŪTEA TRUST

Effects

- A Pūtea trust gathers small interests that would otherwise be uneconomic to the owners
- The land, money and other assets of the trust must be held for Māori community purposes
- Unlike some other Māori land trusts, interests and/or shares remain vested in the beneficial owners
- Succession is not permitted to any interest vested in a Pūtea trustee

Creation

The Court requires the following in an application to constitute a Pūtea trust:

- Schedule of land interests or Māori incorporated shares being vested in the trust
- Name(s) and consent(s) of nominated trustee(s)
- A statement of the purposes for which the land, money, and assets of the trust are to be held
- If the interests of shares in respect of which the trust is to be constituted include interests or shares of any person whose whereabouts are unknown, a

statement setting out the searches or inquiries conducted in an attempt to locate that person

- The written agreement of those persons beneficially entitled to the interests being vested in the trust
- Where the application is made by or on behalf of the trustees of Māori land or a Māori incorporation, a statement setting out the steps taken by the applicant to inform the beneficial owners of the intention to make the application and the opportunity given to the beneficial owners to consider the matter

TRUSTEES' DUTIES

Duties of All Trustees

- Knowledge and understanding of the precise terms of the trust order
- Adherence to the terms of the trust order
- Impartiality between beneficiaries
- Investment of trust funds in accordance with trust order
- Non-delegation of duties
- Duty to act jointly
- Unless provided in the trust deed, trustees are not to reward themselves for their work as trustees
- Duty to pay the trust funds to the right persons as set out in the trust deed
- Trustees must keep proper accounts and provide information to beneficiaries and/or the Court on request

Trustees' Powers (particularly Ahu Whenua and Whānau Trusts)

- General powers of trustees depend on powers given by the Māori Land Court as well as the trust order
- Trustees have the power to alienate Māori freehold land by lease
- Trustees can acquire land from the revenues of the trust
- Trustees can execute documents - If there are 3 or more trustees, majority decision will suffice in most circumstances

Remedies against Trustees

- Court action may be taken against trustees who have acted improperly or negligently, which may result in:
 - Enforcement of the obligations of the trust by the Court, such as forcing the trust to pay money to a beneficially entitled party
 - Removal of a trustee by the Court, which may impact that person's eligibility for future trustee roles

REMOVING/REPLACING TRUSTEES

Removing/Replacing Trustees

The Court may at any time, on application, add or reduce the number of trustees or replace one or more of the trustees. This is common:

- If a trustee decides to resign; or
- If a trustee has passed away.

If the Court removes all of the trustees it is under a duty to appoint a new trustee or trustees.

If the Court only removes one or some of the trustees, it can reduce the required number of trustees without replacing them.

The Court can also amend the Court's record for a trust if a trustee dies by simply noting that trustee as deceased.

If trustee(s) are replaced, the land and/or assets will be vested in the new trustees. It does not matter if that new person has been a trustee before – the Māori Land Court provides free trustee training workshops.

Removal of Trustee

If the Court is satisfied that a trustee is incapable, has failed to carry out his or her duties satisfactorily, lacks competence, or has been absent for prolonged periods, the Court may at any time order the removal of that trustee.

An application for removal of a trustee should include the grounds for removal. For example, evidence of a trustee remaining out of New Zealand for more than 12 months, refusing to act, being incapable of acting, or having committed a crime or breach of trust.

Generally, a lot depends on what the trust order states. So we would need to see a copy of this before we could give specific advice regarding removal of a trustee.

If you decide to appoint a new trustee the Court must be satisfied that the appointment would be broadly acceptable to the beneficiaries. A meeting of owners should be called to decide who the new trustee(s) should be. Minutes of this meeting can then be used as evidence of the support that the new trustees have from the trust's beneficiaries to hold the position.

MEETINGS

General Meeting of Owners

Sometimes the Māori Land Court requires the opinion or consent of owners and this is where a meeting is helpful. Always check Trust Orders or Charters for guidelines for calling meetings. Generally:

- There must be an advertisement giving adequate notice of the meeting; 14 days' notice should be the minimum. The advertisement should include the purpose of the meeting and who is entitled to attend.
- A chairperson should be appointed to ensure the meeting runs smoothly. This should not be the person putting forward the proposal to the meeting.
- Appoint a secretary to take minutes of the meeting; the secretary and chairperson should sign the minutes to confirm they are true and accurate. The minutes then become evidence for the Court.
- Owners of land or their heirs, or proxies for those people, are entitled to vote.

Meeting of Assembled Owners under TTWMA

A formal application has to be made to the Māori Land Court if you want the Court to requisition a meeting of assembled owners.

Owners must assemble together to discuss proposed resolutions to:

- Alienate their block of land
- Establish a Māori Incorporation to manage their land
- Appoint an agent to investigate and consider any suggestion made by the owners for the utilisation or alienation of their land
- Apply money held on behalf of the owners in a nominated tipuna
- Review the leasing of their land
- Pass a resolution of common interest
- Pass a resolution when the Court has sought their opinion as assembled owners

If the meeting is to be called to alienate land, the alienee has to supply the Court with:

- A current search copy of the Court title to the land
- A current copy of the schedule of ownership for the land
- Addresses of the owners
- Current valuation of the land by a registered valuer

Who may attend?

- All owners and trustees of the block of land, their appointed solicitor or proxy
- Any person who claims to be beneficially interested in the land
- Any Registrar or other officer of the Court

- Any person who applied to the Court to call the meeting

Procedures at a meeting of assembled owners:

- A Chairperson must be elected (only impartial parties are eligible)
- A Secretary should be elected
- Only owners and trustees (or their appointed solicitors or proxies) can vote at a meeting of assembled owners
- Where a life interest exists, the holder of the life interest votes as to half of the shares, and the rightful heirs vote as to the other half
- A resolution passed by the assembled owners only comes into force after the Court confirms it – an application must be made to the Court for this purpose

MĀORI INCORPORATIONS

Incorporation of Owners

The Māori Land Court may make an order incorporating the owners of Māori freehold land if it considers that it is in the interest of the owners to do so.

The Court must be satisfied that the owners of the land passed a resolution to incorporate their land at a meeting of assembled owners.

If no meeting of assembled owners is held, the Court must be satisfied that the owners of no less than 15% of the aggregate shares in each area of land in question have consented to the making of the order.

Terms of Order

Every order incorporating the owners of any land shall specify:

- i. The name of the Māori incorporation;
- ii. The description of the land incorporated; and
- iii. Any other assets to be vested in the incorporation.

Additionally, a list of the initial shareholders of the incorporation must be included with the order.

Effects of Order

- The legal title in the land is vested in the incorporation.
- Those who were owners of the land receive shares in the incorporation.
- Heirs of the shareholders can still succeed to shares similar to the process with Māori freehold land.
- Land and other assets vested in the incorporation shall be held on trust for the incorporated owners.
- The Court shall fix the total number of shares in the incorporation.
- A share register is established, which acts as the official record of the shareholders together with the number of shares held by each shareholder and his or her address.
- Upon incorporation, where a Māori incorporation acquires land, it can determine whether to retain the land as an investment or to apply to the Court for an order declaring that the land shall form part of the incorporation and continue to hold the status of Māori freehold land – This affects what the incorporation can do with the land.
- Where acquired land is declared to be investment, it can be more easily alienated by the incorporation.
- The powers of a Māori incorporation to alienate land are stated in the order of incorporation.

Management Committee of a Māori Incorporation

- A Māori incorporation is governed by Te Ture Whenua Māori Act 1993, the Māori Incorporations Constitution Regulations 1994 and the constitution of the incorporation.
- On the making of an incorporation order, the Court appoints an interim committee of management of not less than three and no more than seven persons.
- At the first annual general meeting the shareholders elect a management committee in accordance with the constitution of the incorporation.
- Every member of the committee of the management is responsible for proper administration and management of the incorporation's affairs.
- Members of the committee are entitled to receive reasonable travelling allowances, as fixed at a general meeting of shareholders.
- Members of the committee are also entitled to a refund of reasonable expenses incurred by them in attending or returning from meetings of the committee, as well as receiving such fees for their services as authorised at a general meeting of shareholders.
- The committee must keep full and complete records and accounts of the affairs and transactions of the incorporation.

Removal of a Member of Committee of Management

Any shareholder may apply to the Court to remove a member of the committee if:

- That member has failed to carry out his or her duties satisfactorily;
- That member has contravened TTWMA or the incorporation's constitution; or
- It is in the best interests of the incorporation that the member be removed.

No person shall be disqualified from being a member of the committee merely because of that person's employment as a servant, officer, or contractor of the incorporation.

However, such person must declare an interest and refrain from any discussions during any committee meeting relating to his or her employment or remuneration as a servant of the incorporation.

Alienation of Māori Incorporation Shares

Before the enactment of Te Ture Whenua Māori Act 1993, incorporation shares were deemed personal property. As a result, some shares were transferred to persons outside of the preferred class of alienee.

Since the enactment of TTWMA, shares held by any shareholder in a Māori incorporation are considered undivided interests in Māori freehold land. Accordingly, Māori incorporation shares may only be alienated to the following person(s):

- Children of the alienating owner

- Whānaunga of the alienating owner associated in accordance with tikanga Māori with the land vested in the incorporation
- Other beneficial owners of the land who are members of the hapū associated with the land vested in the incorporation
- Trustees of the above persons
- Descendants of any former owner who is or was a member of the hapū associated with the land vested in the incorporation

In any case where no person who is a member of the above named preferred class of alienees accepts the owner's offer of alienation of the shares, the Māori incorporation may receive shares

Unclaimed Dividends

- Dividends not claimed within 10 years become 'unclaimed dividends'.
- A Māori incorporation holding unclaimed dividends shall within 12 months after the dividends become 'unclaimed dividends' compile a list of shareholders to whom those dividends are payable and forward that list to the Registrar of the Māori Land Court.
- If no claim has been established within 12 months after compilation of the list, the committee of management may authorise the transfer of those dividends to the incorporation absolutely.
- However, if a claim is lodged after the expiry of the said 12 month period, the amount of the claim shall be payable by the incorporation as a debt due to the claimant.

Winding Up of Incorporations

The court may order the winding up or a Māori incorporation in the following circumstances:

- Following investigation of the affairs of the incorporation
- If a general meeting of shareholders has by special resolution resolved that the incorporation should be wound up
- If the incorporation defaults in submitting financial statements and other required documents to either a general meeting of shareholders or the Court
- If the number of shareholders is reduced below two
- If the incorporation is unable to pay its debts
- If it is the opinion of the Court that it is just and equitable to wind up the incorporation

OCCUPATION ORDERS

An occupation order is an order made by the Māori Land Court for the exclusive use and occupation of land for a site for a house.

- Occupation orders can be over the whole or part of a block
- Occupation orders can allow for construction of a new house, or occupation of an existing house

Ownership of the land does not change.

Any beneficial owner, or person entitled to succeed to a deceased owner of Māori freehold land or General land owned by Māori can apply for an occupation order.

An occupation order can be willed to anyone in the above class of people.

Obtaining an Occupation Order

Occupation orders are made at the Judge's discretion, the Court will consider:

- The opinions of the owners as a whole;
- The effect of the proposal on the interests of all the owners of the land; and
- The best overall use and development of the land.

The Court must be satisfied that:

- The owners of the land have had sufficient notice of the application and opportunity to discuss and consider it;
- The owners understand the effect of the terms of the occupation order e.g.: that it can pass by succession;
- There is a sufficient degree of support for the occupation order amongst owners, having regard to the nature and importance of the matter; and
- The amount of land owned by the applicant justifies the occupation order, having regard to shareholding as opposed to the land available and suitable for building.

Minutes of a meeting of owners which show understanding of the effect of an occupation order and support for the granting of such an order can be persuasive for the Court.

The Māori Land Court may at any time, on the application of any person or of its own motion make an order amending or cancelling any occupation order.

PARTITION ORDERS

Purpose

To separate a piece of land into 2 or more defined separate parcels/titles, in order to facilitate the use and occupation of Māori Land by owners.

The Court has discretionary powers to grant Partition orders, and can cancel or vary any existing Partition order.

Generally you can Partition only an amount of land that represents your percentage of shareholding in the block. However, in certain specific circumstances the Court may grant a partition over more land.

Forming a Partition Order

The Court will take into account:

- The opinion of the owners or shareholders as a whole (often as evidenced by the minutes of a meeting of owners showing support for the proposal);
- The effect of the proposal on the interests of all the owners or shareholders; and
- The best overall use and development of the land.

The Court cannot make an order for Partition of Māori Land unless it is satisfied:

- That the owners of land have had sufficient notice of the application and opportunity to discuss and consider it; and that there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter;
- If the partition relates to land owned by a Māori incorporation, that shareholders of the incorporation have had express notice of the application and have passed a special resolution supporting the application; and
- That the partition is necessary to facilitate the effective operation, development, and utilisation of the land.

Applications must include:

- Schedule of ownership information, listing names and addresses of owners
- Schedule of title information, including an up to date search copy of the Certificate of Title (where there is one) and a plan of the land. Survey costs are paid by the applicant
- A land valuation – A certified copy of the district valuation roll, or a valuation by a registered public valuer
- Full list of any improvements that the applicant has effected on the land
- A sketch plan or diagram showing in sufficient detail the area/size of the piece of land to be Partitioned out, its position relative to the whole block, and any river, lake or seashore boundaries of the whole block

On filing the application the matter will be referred to a Judge for directions as to notice requirements, and other matters including the fixing of a preliminary hearing date and any need to require a meeting of owners

The Resource Management Act 1991 (RMA) does not always apply to the Partition of Māori land. Check with the Māori Land Court and or the Regional Council to confirm the application of the RMA in each case.

Building permits are subject to Local Government District Plan restrictions; these are different for each area and should be consulted if you are planning to build.

CHANGE OF LAND STATUS

Changing the status of land from Māori Freehold to General land

There are a number of factors the Court gives weight to before changing the status of Māori land to General land. This is not an easy process and the Court does not look favourably upon applications that negatively affect the retention of Māori land in Māori ownership.

To ensure the Court considers an application to change the status of land to General land you must be able to satisfy the Court that the change in status is necessary for effective utilisation and development of the whenua. You must show:

- The opinions of the owners and their whānau have been considered and there is no objection to the change of status; and
- That the change in status is necessary for owners to retain, use, develop, manage and control the land. If this can be achieved without a change in status, the Court will refuse the order.

Change from General land to Māori Freehold land

The Court can change the status of the land from General to Māori Freehold providing it is satisfied that:

- The land is beneficially owned by one or more Māori;
- The owners have had adequate opportunity to consider the change of status;
- Either all or a significant proportion of the owners agree to the change of status;
- The land can be managed or utilised effectively as Māori freehold land; and
- It is desirable the land become Māori freehold land given the history of the land and the owners' personal association with the land.

RESERVATIONS

Māori land or General land may be set aside as a Reservation for a number of purposes, for example as a Marae, burial ground, landing place, or wāhi tapu (being a place of significance in accordance with tikanga Māori).

The land shall be held for the common use and benefit of the owners of specific class of Māori.

No reservation can be created if there is any mortgage or charge over the property.

The trustees of any Māori reservation may, with the consent of the Court, grant a lease or occupation licence of the reservation or of any part of it for any term not exceeding 14 years.

Reservation Trustees

Trustees of Māori Reservations have the same powers and obligations as other trustees of Māori land.

A trustee can be a body corporate alone (e.g. a Māori trust board or a Māori incorporation). Alternatively there must be a minimum of two persons as trustees for the reservation.

The trustees of a reservation must, subject to any order of the Court, call an annual meeting each year, and give to owners 21 days prior notice of the time and place of the meeting.

Where a reservation is a Marae the trustees must, in agreement with the beneficiaries of the Marae, draw up a charter for the reservation.

Activities such as the use of any reservation buildings, or the promotion and holding of hui, sports events, competitions and concerts, require the prior written consent of the trustees. No prior written consent is required for a tangihanga on a reservation.

RATES ON MĀORI LAND

Local Government (Rating) Act 2002

In general, Māori freehold land is liable for rates in the same manner as if it were general land, subject to certain exceptions

Person Liable for Rates

Where land is vested in trustees, the trustees are liable to pay the rates. Trustees can usually apply for remission of rates if the land meets the requirements for remission under the relevant local authority policy for rates on Māori land.

A person who, alone or with others:

- leases the land
- resides on the land
- maintains livestock on the land
- uses the land in any other way

Will either be responsible for paying rates by agreement with the owners, or ought to be responsible for paying the rates.

Owners of land that is not managed by trustees are responsible for paying the rates on that land, though often they can apply for a rates remission from the local authority.

Unpaid Rates

In general, no interest of any person in Māori customary or Māori freehold land can be taken by any form of judicial process for payment of that the person's debts or liabilities. However, this does **not** apply to recovery of rates payable in respect of Māori land.

A local authority can apply to the Māori Land Court for an order charging the unpaid rates against the land if the person liable fails to pay rates 6 months after their due date, and the sum owing is more than \$50. The application will not be accepted if it is made later than 6 years after the due date of the rates.

In considering an application for a charging order, the Māori Land Court must take into account:

- The area and location of Māori freehold land in respect of which rates are unpaid;
- The name of any person actually using all or part of the land during the period that the rates were unpaid;
- Whether that person has an interest in the land;
- The purpose for which that person used the land during the period the rates were unpaid;
- If the land is vested in trustees, whether all reasonable steps have been taken by the local authority to obtain payment of the rates from the trustees;
- The value of land;

- The names and addresses of the persons to whom rates assessments for the land have been delivered at any time during the period for which the rates were assessed; and
- All objections to the rates being charged.

If the Court orders a charge in the land, no owner may deal with the land except with the consent of the local authority or leave from the Court.

Should the charging order remain unsatisfied within 6 months, the local authority may apply to the Māori Land Court to enforce the order.

If the Māori Land Court is satisfied that it would not be contrary to the interests of the owners to do so, it must enforce the charging order by:

- Appointing a receiver for the purpose of enforcing the charging order
- Constituting an Ahu Whenua trust

In doing so, the Court must consider:

- Whether land is capable of producing an income that enable the payment of rates in the future; and
- Evidence and submissions put forward by any owners of the land and the local authority.

Local Government (Rating) Act 2002

A local authority may remit all or parts of the rates on Māori freehold land.

The following land is fully non-rateable:

- Land that is set apart as a reservation used for the purpose of a marae or meeting place, and that does not exceed 2 hectares
- A Māori reservation, but not a wāhi tapu
- Māori freehold land that does not exceed 2 hectares and in which a Māori meeting house is erected
- Māori customary land
- A Māori burial ground (providing it does not exceed 2 hectares).

Local Government policies on rates remission

There is no standard rates remission policy nationwide. Each local authority has a different district plan that contains their rates remission policy. This plan must be consistent with the Local Government (Rating) Act 2002. Contact the relevant local authority to ask about their policy.

THE MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011

The Marine and Coastal Area (Takutai Moana) Act 2011 came into force in April 2011 replacing the Foreshore and Seabed Act 2004.

No Ownership

The Takutai Moana Act creates a new regime of “no ownership” for the marine and coastal area. This in turn creates a whole new category of land called the “common marine and coastal area”.

Recognition of Customary Rights and Title under the Takutai Moana Act

Any iwi, hapū or whānau, or a collective of these groups, can apply for recognition of customary interests in the common marine and coastal area.

The Act provides for recognition in two ways:

- 1. Protected Customary Rights** – which can be rights to an “activity, use or practice”, and;
- 2. Customary Marine Title** – similar to, but not amounting to, ownership and exclusive possession.

Under the Act, these interests can be recognised through an agreement with the Crown, or through a High Court order.

1. Protected Customary Rights

Under section 51 of the Takutai Moana Act, an applicant group must show that:

- The group has exercised the right since 1840; and
- The group continues to exercise the right in accordance with tikanga, whether it continues to be exercised in exactly the same or similar way, or has evolved over time; and
- The right has not been extinguished.

The applicant group does not need to own land in, or next to, the specified part of the common marine and coastal area in order to establish protected customary rights.

2. Customary Marine Title

Under section 58 of the Takutai Moana Act, an applicant group must prove that:

- The group holds the area in accordance with tikanga; and either
 - That the group has exclusively used and occupied the area since 1840 until now without substantial interruption; or
 - That the group received the area, at any time after 1840, through a customary transfer in accordance with tikanga.

Tikanga is defined as “Māori customary values and practices”. The terms “Exclusively used” and “substantial interruption” are not defined in the Takutai Moana Act.

Agreements with the Crown:

Iwi, hapū or whānau groups interested in working towards an agreement with the Crown should contact the Foreshore and Seabed Unit at the Ministry of Justice.

How to Apply to the High Court for Recognition of Customary Interests

Part 4 of the Takutai Moana Act sets out the application process for recognition of protected customary rights or customary marine title in the High Court.

Applications or notice given of intention to file an application must be filed with the High Court before **3 April 2017**.