

The Ngāi Tahu Māori Law Centre provides a free legal service to all Māori living in the Ngāi Tahu rohe and all Ngāi Tahu anywhere in the world.

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Whānau Trusts: Questions and Answers

This information is meant to give introductory advice on Whānau Trusts.

The Ngāi Tahu Māori Law Centre recommends that each individual or whānau should seek legal advice in respect of their own specific circumstances

1. What is a whānau trust?

- A whānau trust is a legal structure of ownership for Māori freehold land interests and Incorporation shares provided for under Te Ture Whenua Māori Act 1993 (“the Act”).

2. What are the benefits of forming a whānau trust?

- When a whānau trust is formed it exists forever.
- No further succession takes place. Whānau trusts provide land owners with a legal structure that prevents shareholdings becoming smaller over the coming generations.
- NOTE: Tītī Island interests cannot be vested into a whānau trust.

3. Who “owns” the land in a whānau trust?

- Once an owner vests their Māori land into a whānau trust, they no longer own the land. The land is vested in the trustees of the whānau trust.
- The trustees of a whānau trust must deal with the shares in a manner that benefits all the beneficiaries of the trust and complies with the trust order.

- The beneficiaries of a whānau trust are generally all the descendants of the named tipuna in the trust order, right down to the newest baby born into the whānau.
- The trustees of the trust must ensure that they treat all beneficiaries equally and fairly, and keep them informed of dealings, meeting as required by the trust deed.

4. Who can form a whānau trust?

- Anyone with Māori Incorporation shares or freehold land interests can form a whānau trust.
- A whānau trust can be formed by one person, or by several owners of Māori freehold land.

5. How is a whānau trust formed?

- An application to form a whānau trust is filed with the Māori Land Court (“the Court”), and the matter is then set down before a Judge at a Court hearing. If the Court is satisfied that those making the application have completed all the steps required, the application will be allowed.
- There is a filing fee of \$62.30 when an application is made to the Court.

6. I want to form a whānau trust. What steps do I need to take before making an application to the Court?

- All whānau trust applications must have:
 - draft trust order,
 - signed owner consent witnessed by an appropriate person.
 - and signed trustee consent(s) witnessed by an appropriate person.
- The Ngāi Tahu Māori Law Centre can supply copies of all the listed documents, and advise as to who can witness the signing of documents.
- If more than one owner is vesting their land in the whānau trust, a meeting of owners must be held and agreement reached on the terms, and trustees for the whānau trust. Minutes must be taken of the meeting, to file with the Court when the application to form the trust is made.

The draft trust order

- The draft trust order is the document that details the rules that will govern the trust. Each draft trust order must state the proposed name of the whānau trust and the tipuna of the whānau trust. You can name a whānau trust anything you like, but the tipuna of a whānau trust must be chosen with care, as all the

descendants of the specified tipuna will generally be the beneficiaries of the trust.

- Alterations can be made to the draft trust order to suit requirements, including limited beneficiaries clauses.

Trustees

- Anyone can be a trustee for the whānau trust, provided they meet the requirements of the governing legislation.
- Trustees must be nominated and agree to being appointed.
- Before they consent, the prospective trustee should be aware of the duties and responsibilities required in the position. The Ngāi Tahu Māori Law Centre can provide this information.
- Each trustee must agree with the final draft trust order.
- When appointing trustees it is important to consider the skills and abilities required in the position.

- If any tax is owing to the IRD, trustees are responsible for making payments on time. Penalties and interest will accrue on the outstanding balance.
- IRD must be notified where any changes are made to trustees or if a whānau trust is dissolved,

Tax obligations for beneficiaries

- When a beneficiary files a yearly tax return they must specify any income they have received from a whānau trust, so it can be taxed accordingly.

7. My whānau trust has been formed. What are the next steps that need to be taken?

Bank accounts

- The trustees of the whānau trust must set up a separate bank account for the whānau trust. Any money coming off the Māori land that has been vested into the whānau trust must now go into the whānau trust bank account.
- Trustees of the whānau trust are responsible for telling the administrators of the land:
 - That a whānau trust has been established.
 - The contact details and bank account details of the whānau trust.

Tax obligations for trustees

- The trustees of a whānau trust must register the trust with the IRD, receive an IRD number for the trust, and supply evidence to the IRD that a whānau trust has been created.
- Trustees must file an IR6 Income Tax return for the whānau trust each year, regardless of whether the trust has received any income.
- It is the responsibility of the trustees to record the IRD numbers of all the beneficiaries of the trust.
- All financial records for the whānau trust must be kept by the trustees for 7 years.
- Trusts can claim expenses to assist with matters relating to the running of the trust i.e. advertising for meetings etc.

For Specific information on tax obligations contact the IRD on **0800 227 774**.

More information is available **at www.ird.govt.nz**.

Also note that the IRD has a Maori Community Liason Team.