



Kaitiakitanga

Trusteeship: A person in a position of trust

Māori Land Court: Trustee Training

Learning objectives:

On completion of this learning module you will be able to:

PART ONE

1. Comprehend the Māori Land Court process of trustee appointment.
2. Describe the different types of trustees.
3. Distinguish between mandatory trustee duties and default trustee duties, and what they are.

PART TWO

4. Identify the components of a management structure.
5. Distinguish between the different methods of managing land.
6. Understand the key parts of a trust order.

What is a Trustee?

Someone you can trust to manage your tūpuna whenua, money and other benefits on your behalf.

Who can be a trustee?

- The Court will appoint trustees and can consider anyone however some points to consider:
 - Has the time, commitment and resource;
 - Open to learning and teaching the new/current trustees;
 - Must be 18 years and over;
 - The right qualifications, skills and experience;
 - Ability to remain neutral;
 - MOST importantly someone who practises aroha, tika, pono.

How do you become a trustee?

First
During the
hui

- Nominated and elected at a meeting of owners/beneficiaries (trust orders and charters list the process for election).

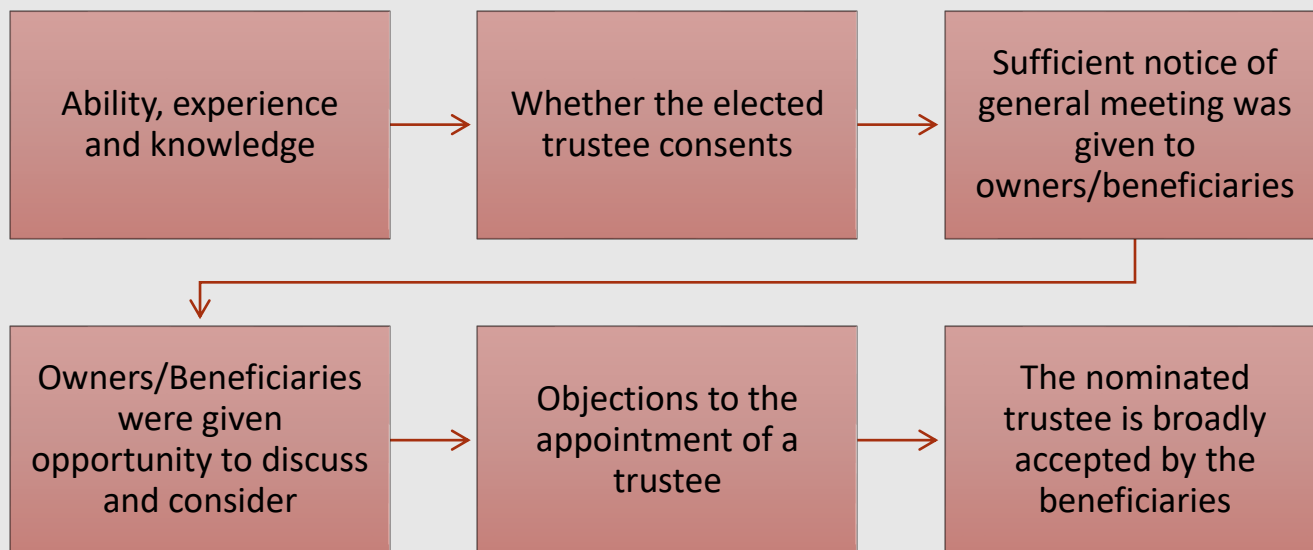
Second
After the hui

- Complete all the relevant paperwork at the hui/meeting i.e trustee consent forms.

Third
At court

- An elected trustee formally becomes a responsible trustee when the court has granted the order of appointment.

To be appointed, the Court must consider:



Who can't be a trustee?

The Court is UNLIKELY to appoint a person who:

- Is bankrupt;
- Is imprisoned;
- Has been convicted of a crime involving dishonesty or fraud;
- Is a minor (must be 18 years+);
- Person under a disability;
- Has previously been removed due to inappropriate administration of a trust.

Three Types of Trustees:

1. **Responsible Trustee:** Carry out the terms of the trust.
Liable for their decisions.
2. **Advisory Trustee:** Responsible trustees may consult with advisory trustee. Not liable for decisions.
3. **Custodian Trustee:** Carry out the direction of the responsible trustee. Not liable for decisions.

Trustee Duties (Trusts Act 2019)

- Mandatory trustee duties (s22-27) to:
 1. Know the terms of trust;
 2. Act in accordance with the terms of the trust;
 3. Act honestly and in good faith;
 4. Act for the benefit of the beneficiaries or to further the permitted purpose of the trust;
 5. Exercise powers for proper purpose.

Trustee Duties (Trusts Act 2019)

- Default trustee duties (s29-38) to:
 1. General duty of care;
 2. Invest prudently;
 3. Not to exercise power for own benefit;
 4. Consider exercise of power;
 5. Not to bind or commit trustees to future exercise of discretion (except lease agreements);
 6. Avoid conflict of interest;
 7. Impartiality;
 8. Not to profit;
 9. Act for no reward;
 10. Act unanimously.

Trustee Duties (Trusts Act 2019)

- Keep and share certain information (s45-55). Every trustee must:
 1. Keep a copy of the trust order and any variations;
 2. (At least one trustee) hold other core trust documents;
 3. Make basic trust information available to every beneficiary;
 4. Provide other information about the trust to a beneficiary if they request it.

***TIP:** that trustees create an email address for trust business that can be passed on to future replacement trustees. Also consider setting up a PO Box for the same reason.*

PART ONE – WHAT WE COVERED

- ✓ The Māori Land Court process of trustee appointment.
- ✓ Discussed the different types of trustees.
- ✓ Clarified the difference between mandatory trustee duties and default trustee duties, and what they are.
- ✓ Reviewed trustees duty to keep and share information.

Key parts of a management structure

1. **Management:** The trustees or persons responsible for the overall management of the trust.
2. **Beneficiaries:** The persons who benefit from the management of the assets.
3. **Rules:** The trust order (charter for a Marae) outlines the purpose of the trust.
4. **Assets:** The resources placed in the trust eg house, shed, or taonga.

Share Based Management Structures



Kaitiaki Trust

- Established for individuals who are minors or have a physical/mental disability or is unable to manage their own affairs due to age.

Pūtea Trust

- Used to pool together uneconomic land interests/shares in a block(s) for the benefit of the descendants of Tūpuna.

Whānau Trust

- Whānau bring land interests/shares together for the benefit of the descendants' of the Tūpuna. Great for preventing further fragmentation of the land.

Land Based Management Structures

Ahu Whenua Trust

- Promotes the use and development of the whole block(s) for the benefit of the owners. Great for commercial use e.g. farming, forestry.

Whenua Tōpū Trust

- Administers assets from whole block(s) belonging to an iwi or hapū for the benefit of the owners. Great for the return of Crown land.

Māori Reservation

- May be set aside for a particular purpose for the benefit of the named members of any group of Māori e.g. hapū members or residents of local community.

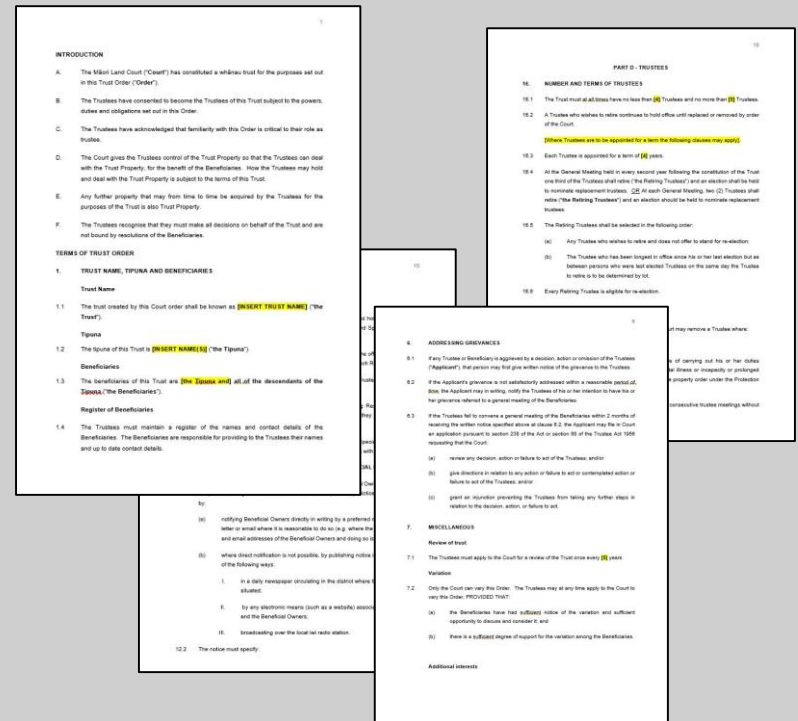
Māori Incorporation

- Similar to a company.

What is the terms of the Trust?

Also known as:

- Trust deed
- Trust order
- Constitution
- Marae charter
- The trust order is the legal contract between beneficiaries/owners and trustees as to how the trust should be managed including the decisions made over the land and property.
- Review of trust



PART TWO – WHAT WE COVERED

- ✓ The four components of a management structure.
- ✓ The different methods of managing land and types of trusts.
- ✓ The key parts of a trust order.

Have more questions?



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