

**TE KOOTI WHENUA MĀORI**  
**TUHINGA ĀRAHI – NAMA PŪTEA MĀ WHENUA MĀORI**  
**PRACTICE NOTE FOR LENDING ON WHENUA MĀORI**

29 February 2024

**Hei tīmatanga kōrero**

*Introduction*

1. This practice note has been issued as a guide to assist landowners, lawyers and the banking sector with lending against Māori freehold land (“whenua Māori”). This practice note is not binding and does not restrict the Court’s power and discretion under [Te Ture Whenua Maori Act 1993](#) (“the Act”).
2. This practice note addresses the following:
  - (a) How do owners of whenua Māori approve a mortgage?
  - (b) How is a mortgage registered against whenua Māori?
  - (c) Can a mortgage be registered against the leasehold estate of whenua Māori?
  - (d) How does a mortgagee exercise its power of mortgagee sale in relation to whenua Māori?
  - (e) What are the Court’s powers under the [Property Law Act 2007](#) in relation to whenua Māori?

**Me aha ngā kaipūpuri whenua Māori kia tuku whakaae ai mō tētahi mōkete?**

*How do owners of whenua Māori approve a mortgage?*

*Whenua Māori held by a Māori land trust*

3. Where the title to the land is vested in a Māori land trust (e.g. an Ahu Whenua Trust or a Whānau Trust) the trustees can approve a mortgage against the land subject to any restrictions in the trust order (ss [147](#) and [150A](#) of the Act).
  - It is important to check the trust order thoroughly to ensure it does not prevent the trustees from registering a mortgage against the land. If the trust order does prevent a mortgage, an application will have to be filed to amend the trust order per s 244 of the Act.
4. Generally, the trustees can approve the mortgage by a majority resolution ([s 227](#) of the Act).

- Again, it is important to check the trust order as some trust orders modify [s 227](#) of the Act, which allows majority decisions, to require certain decisions to be made by trustees unanimously.
5. Once the trustees have approved the mortgage, the loan documents, mortgage instrument (or authority and instruction form) and any other documents required to register the mortgage (“the mortgage documents”) have to be signed by ALL of the trustees noted in the Court records:
    - (a) This is because the mortgage has to be registered under the Land Transfer Act 2017 (see [s 227\(2\)](#) of the Act).
    - (b) This means that any minority trustees who voted against the mortgage must still sign the mortgage documents to implement the decision of the majority trustees.
  6. Where one or more of the trustees are unable or refuse to sign the mortgage documents, the remaining trustees can apply to the Court:
    - (a) To seek directions;
    - (b) To remove any trustees who have passed away or resigned;
    - (c) To remove a trustee for cause for refusing to implement the majority decision;  
or
    - (d) To approve the mortgage documents being signed by a majority of trustees only per [s 227\(3\)](#) and [237](#) of the Act.
  7. Where a minority trustee disagrees with the majority who have approved a mortgage, the minority trustee can:
    - (a) Record their dissent in writing before the mortgage is registered. That trustee will then be absolved from any personal liability arising out of the decision to approve a mortgage ([s 227\(6\)](#) of the Act); or
    - (b) Apply to the Court to:
      - i. Seek directions;
      - ii. Review the trust; or
      - iii. Enforce the trustees’ obligations if it is alleged the majority trustees have breached their obligations.
    - (c) Any such application should be made in good faith, as an unsuccessful application could result in an award of costs.
  8. Outside of these options, the minority trustee needs to be careful about any attempt to disrupt or prevent the trustees from registering a mortgage (such as refusing to sign the

mortgage documents). If the Court considers that the minority trustee is acting unreasonably, they could be removed from office for cause.

#### *Whenua Māori held by a Māori Incorporation*

9. Where the title to the land is vested in a Māori Incorporation, the committee of management of this Incorporation can approve a mortgage against the land subject to any restrictions in its constitution ([ss 147](#) and [150B](#) of the Act).
  - (a) It is important to check that there are no restrictions in the constitution for the Incorporation which prevent a mortgage being registered against the land.
  - (b) If there are restrictions preventing a mortgage the Incorporation will have to amend its constitution per [s 268](#) of the Act.
  - (c) Where the Incorporation doesn't have a constitution, it is governed by the Maori Incorporation Constitution Regulations 1994 ([s 268](#) of the Act).
10. The mortgage can be approved by a majority of the members of the Incorporation's committee of management, provided that the majority cannot be less than three members of the committee ([s 270\(2\)](#) of the Act).
11. Where the mortgage has been approved by a majority, the mortgage documents can be signed as follows ([s 270](#) of the Act):
  - (a) By fixing the common seal of the Incorporation in the presence of two members of the committee of management.
  - (b) The two members who witnessed the seal must also sign the mortgage documents.

#### *Whenua Māori held by the owners*

12. Where the title to whenua Māori is held directly by the owners (i.e. there is no administration structure such as a trust or incorporation in place over the land) a mortgage has to be approved by every owner on the title ([ss 147](#) and [150C](#) of the Act). This means that:
  - (a) Every owner has to approve the mortgage; and
  - (b) Every owner has to sign the mortgage documents.
13. Where there are a large number of owners, obtaining unanimous consent to a mortgage can be difficult or impossible. In those cases, a mortgage can be approved by:
  - (a) A resolution carried at a meeting of assembled owners per [Part 9 of the Act](#); or
  - (b) Constituting a trust or incorporation over the land and using the administration structure to approve the mortgage as set out above.

### **Mā te aha e rēhita ngā mōkete ki te whenua Māori?**

*How are mortgages registered against whenua Māori?*

14. Where the title to the land is held by a Māori land trust or a Māori Incorporation, the mortgage has to be sent to the Māori Land Court's Registrar for noting ([ss 150A](#) and [150B](#) of the Act).
  - (a) The mortgage does not have to be approved by a Judge.
  - (b) The mortgage does not require a certificate of confirmation from the Registrar.
15. Where the title to the land is held directly by the owners (i.e. there is no administration structure in place) the owners have to apply to the Registrar for a certificate of confirmation per [s 160](#) of the Act.
  - (a) The Registrar will seal a certificate confirming the mortgage, however, the Registrar will not issue the certificate until:
    - i. One month has expired from the date the certificate is sealed; or
    - ii. Where an application is made to review the sealing of the certificate the date on which that application is disposed of.

[\(Section 160\(7\) & \(8\)](#) of the Act).
16. Once the mortgage has been noted by the Registrar, or a certificate confirming the mortgage has been issued, your solicitor can register the mortgage against the title to the land with Land Information New Zealand in the same way that a mortgage would be registered against General land.

### **Ka taea rānei te rēhita i te mōkete ki te paihere rawa whaiaro whenua Māori?**

*Can a mortgage be registered against the leasehold estate of whenua Māori?*

17. A mortgage can be registered against the leasehold estate of whenua Māori in the same way that it can be registered against the freehold estate. The same process set out above applies. However, it is important to check the lease as:
  - (a) The lease may prevent the registration of a mortgage against the leasehold estate; and
  - (b) The lease may also require that the lessor has to approve the mortgage (the lessor is the person or administration structure who granted the lease, who will usually hold the title to the land).
  - (c) If consent from the lessor is required, the same process above to approve the mortgage (by a trust, incorporation or owners) applies.
18. It is also important to ensure that the lease has been properly approved.

19. The lease has to be approved by the trustees of a trust, the committee of management of a Māori Incorporation, or by the owners (where there is no administration structure) in the same way that they approve a mortgage as set out above.
20. Where the lease has been approved by a Māori land trust or a Māori Incorporation ([ss 150A](#) and [150B](#) of the Act):
  - (a) If the term of the lease is for less than 21 years (including any rights of renewal) the lease does not have to be approved by a Judge, confirmed by the Registrar, or noted by the Registrar. It doesn't require any interaction or involvement with the Court.
  - (b) If the term of the lease is between 21 years and 52 years (including any rights of renewal), it must be noted by the Registrar; and
  - (c) If the term of the lease is more than 52 years (including any rights of renewal) it must be:
    - i. Approved by the trustees or the committee of management as above;
    - ii. Approved by at least half of the beneficial owners or the persons who hold at least 50% of the shares in the land or the Incorporation; and
    - iii. Approved by a judge.
21. Where the lease has been approved directly by the owners (i.e. where there is no administration structure in place over the land), under [s 150C](#) of the Act:
  - (a) If the term of the lease is more than 52 years (including any rights of renewal) it must be:
    - i. Approved by at least half of the owners or the persons who hold at least 50% of the shares in the land; and
    - ii. Approved by a judge.
  - (b) For all other leases:
    - i. The lease must be approved by the owners in the same way that they can approve a mortgage; and
    - ii. The Registrar must issue a certificate of confirmation for the lease per [s 160](#) of the Act.

**Me aha te kaimōkete kia tuku ai ia i tana mana hoko mōkete mō te whenua Māori?**

*How does a mortgagee exercise its power of mortgagee sale in relation to whenua Māori?*

22. A mortgagee can exercise the power of mortgagee sale over whenua Māori in the same way as any other land. While there are certain requirements placed on other sales/alienation of whenua Māori by the Act, those do not apply to a mortgagee sale. This

is because a mortgagee sale is excluded from the definition of an 'alienation' under the Act (see [s 4\(c\)\(vii\)](#)).

23. To avoid doubt, this means that a mortgagee can pursue a mortgagee sale without having to meet the requirements placed on other sales/alienations by the Act:
- (a) There is no right of first refusal to the preferred class of alienee.
  - (b) A mortgagee sale does not have to be confirmed by the Court.
  - (c) Generally, the Court is not involved in a mortgagee sale unless an application is made per [Part 3 of the Property Law Act 2017](#).
  - (d) However, the mortgagee must send the sale documents to the Registrar for noting to update the Court's records.
24. Upon mortgagee sale the land remains as Māori freehold land.

**He aha te mana o te Kooti i raro i te ture Property Law 2007 mō te whenua Māori?**

*What are the Court's powers under the Property Law Act 2007 in relation to whenua Māori?*

25. The Māori Land Court has the same powers as the High Court under [Part 3 of the Property Law Act 2007](#) where a mortgage relates only to whenua Māori.



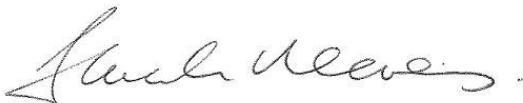
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**Chief Judge Caren Fox**



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**Judge Miharo Armstrong**



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**Judge Sarah Reeves**

## Glossary

**Administration structure:** A trust or incorporation set up under Te Ture Whenua Māori Act 1993 to hold and manage Māori land on behalf of all its owners.

**Authority and Instruction form:** A prescribed form which authorises and instructs a lawyer to take certain actions on behalf of the landowners such as registering a mortgage.

**Freehold title:** A land title giving the person(s) listed full legal ownership of the land in question.

**Leasehold title:** A land title giving the person(s) listed a limited set of rights in the land in question (such as a right to occupy or utilise the land) for a fixed period of time.

**Mortgage:** A charge over land or an interest in land created by a mortgagor under the Property Law Act 2007.

**Mortgagee:** An organisation (or person) that lends money to a mortgagor, and as a part of the agreement to lend this money receives a mortgage over the mortgagor's land.

**Mortgagee sale:** The right of a mortgagee to sell the land over which they hold a mortgage, if the mortgagor has not met the agreed terms for repayment of money loaned to them under that mortgage.

**Mortgagor:** A person (or persons) who owns land, or an interest in land, and gives a mortgage to a mortgagee as part of an agreement to lend the mortgagor money.

**Preferred Class of Alienees:** A specified group of people who have an initial right to purchase Māori freehold land when it is alienated/sold under Te Ture Whenua Māori Act, ahead of all other prospective purchasers. Note that this right does not extend to a mortgagee sale – see paragraphs 22-23 above.

**Trust Order:** A Court order setting out the terms under which trustees hold and manage land or other assets vested in them by the owners of the land or assets. This may include restrictions on actions that the trustees are able to take (e.g. in relation to the sale or mortgaging of land).