



Niue Land Registry Handbook

Foreword

This land registry handbook is a practical, user-friendly and informative guide for registry staff when accepting and processing Land Court applications.

It comes in two parts:

1. Common applications, which includes legislative references, guidelines, forms and fees; and
2. Registry procedures, which outlines procedures with more detailed explanations.

The manuals will serve as a written record of existing procedures and used to support registry staff training. It also serves as a valuable resource for staff and court users.

I acknowledge the initiative and commitment on the part of the Pacific Justice Sector Programme (PJSP) to produce this Handbook, and the financial backing by the New Zealand Government through the Ministry of Foreign Affairs and Trade. I particularly commend the outstanding work of Tiara Tukuniu (Deputy Registrar, Department of Justice, Niue), Janine Ford and Delwyn Te Moni from the PJSP team who spent many hours collaborating to prepare and produce this handbook. Your hard work is appreciated.

This joint effort has resulted in a manual for staff of which we can all be proud and which will go towards improving the standards and quality of services provided by the registry.

Chief Justice Craig Coxhead

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Chapter 1. Rules for applications

1.1 Legislative references

- Land Act 1969, ss 10, 11, 14, 16, 22, 34, and 47
- Land Court Rules 1969, r 4.1, 4.2, 12.1, 12.5, 12.6, 12.13, Schedule 1 Forms, Schedule 2 Fees

1.2 Purpose

These rules apply to almost all Land Court applications in the High Court and include applications filed in the civil, criminal and land divisions of the High Court.

Guidelines have been established for:

- ss 10-11 application for determination of title
- s 14 appointment of Leveki Magafaoa
- s 16 change/joint/remove/appoint Leveki Magafaoa
- s 22 confirmation of leases
- s 34 partition
- s 47 injunction.

These need to be explained to all applicants.

1.3 Forms

Prescribed forms are set out in Schedule 1 of the Land Court Rules 1969.

Where no form is specifically prescribed, the existing forms may be used and modified as necessary.

Any form directed by a Judge or approved for use by a registrar shall be sufficient. An equivalent form in Niuean may be used. Approved forms are referenced under each application and included as appendices.

Applications must be completed in legible handwriting or typed, and all questions must be answered.

1.4 Fees

Prescribed fees for any application are set out in Schedule 2 of the Land Court Rules 1969. NCT of 12.5% must be added.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 2. Application for determining title to and interest in Niuean land

2.1 Legislative references

- Niue Amendment Act (No 2) 1968, s 22
- Land Act 1969, Part 2 (ss 10-16)
- Land Court Rules 1969, rr 12-14, and Schedule 2

2.2 Purpose

The Land Court shall have exclusive jurisdiction to investigate the title to Niuean land. Parties may apply to the court to determine relative interests in Niuean land as far as those interests can be ascertained by the court.

2.3 Forms

Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

Application for determination of title

Note

This application is usually accompanied by an Application for Leveki Magafaoa. To ensure the applications are heard together when the case goes to Court, please file this application and the accompanying Leveki Magafaoa application together on the same file.

2.4 Evidence needed to support application

The applicant must make a submission in writing to go with the application for determining title to and interest in Niuean land. The submission must explain the following where relevant to the claim:

- the reason the claim is being made
- the boundaries of the portion of the land being claimed
- the applicant's genealogical tables. These will show the applicant's descent from the ancestor/s through whom title is claimed, down to and including all persons the claimant admits are entitled with the claimant under their claim
- the names and the approximate location of cultivations, villages, and burial places (with names of relatives of the claimant and persons included in their claim who have been there, and any other places or marks of historical interest)
- evidence/record of discussions with adjacent landowners
- any other proof or signs of occupation of, or connection with the land, by the claimant and other persons included in their claim.

2.5 Fees

The filing fee for any application to determine title and interest is set out in the fees schedule – refer to Land Court Rules 1969, Schedule 2. Item 3.1 sets the fee at \$10, plus 12.5% NCT.

2.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- ensure the application fee has been paid and a receipt given
- register the application
- set up the file

2.7 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application
- Setting up a land file
- Guidelines Land Court applications.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 3. Application for appointment of Leveki Magafaoa

3.1 Legislative references

- Niue Amendment Act (No 2) 1968, s 47(1)
- Land Act 1969, ss 14-16
- Land Court Rules 1969, Schedule 2
- Niue Land Court Bench Book, Chapter 4, Section 2

3.2 Definition

- **Leveki Magafaoa** means a trustee or guardian of a family having any right, title, estate, or interest in Niuean land – Niue Amendment Act (No 2) 1968.

3.3 Purpose

A Leveki Magafaoa makes significant decisions on behalf of the members of the Magafaoa and has the power to control the occupation and use of the land under Niuean custom, and the power to alienate the land.

When the ownership of any land has been determined, an application may also be made for an order appointing a Leveki Magafaoa of that land. The court has exclusive jurisdiction to appoint a Leveki Magafaoa.

A Leveki Magafaoa application is used:

- in conjunction with the **Determination of title and interest application** when land is surveyed for the first time
- when a Leveki Magafaoa is replaced, removed or one or more additional Leveki Magafaoa are added.

3.4 Who may apply

- any member of the Magafaoa who is 21 years or older
- an appointed agent on behalf of a disabled person

3.5 Forms

Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

Application for appointment of Leveki Magafaoa

Note

This application is usually accompanied by an Application for determining title to and interest in Niuean land. To ensure the applications are heard together when the case goes to Court, please file this application and the accompanying application for determining title to and interest in Niuean land together on the same file.

3.6 Evidence needed to support application

- consent of the Leveki Magafaoa for the new appointment (unless the Leveki Magafaoa are deceased)
- written consent from Magafaoa for the appointment of the Leveki Magafaoa
- minutes of meetings approving the Leveki Magafaoa
- statement and/or supporting submissions by the applicant including the grounds for the application
- any relevant supporting evidence.

This documentation is needed before the application can progress through to court.

3.7 Fees

The filing fee for a Leveki Magafaoa is set out in the fees schedule – refer to Land Court Rules 1969, Schedule 2. Item 3.2 sets the fee at \$5, plus 12.5% NCT.

3.8 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- ensure the application fee been paid and a receipt given
- register the application
- include this application with the application for determining title to and interest in Niuean land.

3.9 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines.

- Registering an application
- Setting up a land file
- Guidelines Land Court applications.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 4. Application to change Leveki Magafaoa

4.1 Legislative references

- Land Act 1969, s 16
- Land Court Rules 1969, Schedule 2
- Niue Land Court Bench Book, Chapter 3

4.2 Definition

- **Leveki Magafaoa** means a trustee or guardian of a family having any right, title, estate, or interest in Niuean land – Niue Amendment Act (No 2) 1968.

4.3 Purpose

An application to change a Leveki Magafaoa is used when a Leveki Magafaoa is replaced, removed or one or more additional Leveki Magafaoa are added.

The court has exclusive jurisdiction to appoint a Leveki Magafaoa and the process is the same as an application to appoint a new Leveki Magafaoa.

4.4 Who may apply

- any member of the Magafaoa who is 21 years or older
- an appointed agent on behalf of a disabled person.

4.5 Forms

Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

Application for appointment of Leveki Magafaoa

4.6 Evidence needed to support application

- consent of the Leveki Magafaoa for the new appointment (unless the Leveki Magafaoa are deceased)
- written consent from Magafaoa for the appointment of the Leveki Magafaoa
- minutes of meetings approving the Leveki Magafaoa.
- statement and/or supporting submissions by the applicant including the grounds for the application.
- any relevant supporting evidence.

This documentation is needed before the application can progress through to court.

4.7 Fee

The filing fee for a Leveki Magafaoa is set out in the fees schedule – refer to Land Court Rules 1969, Schedule 2. Item 3.2 sets the fee at \$5, plus 12.5% NCT.

4.8 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- ensure the application fee been paid and a receipt given
- register the application
- include this application with the Application for determining title to and interest in Niuean land.

4.9 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application
- Setting up a land file
- Guidelines Land Court applications.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 5. Application for confirmation of alienation of land – Including applications relating to leases, sales and security charges

5.1 Legislative references

- [Niue Amendment Act \(No 2\) 1968](#)
- Land Act 1969, s 2, Part 3 (ss 17-46), s 23
- Land Court Rules 1969, [Schedule 2](#)
- Niue Land Court Bench Book, [Chapter 4](#)

5.2 Definition

- **Alienation:** "... a contract of sale of timber, minerals, crops, or other valuable things attached to or forming part of any Niuean land, or being the produce of it, shall be deemed to be an alienation of that land, unless the thing so sold or agreed to be sold has been severed from the land before the making of the contract."
- **Alienation includes:** "... the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust or other disposition, whether absolute or limited, and whether legal or equitable; and includes a contract to make any such alienation; and also includes the surrender or variation of a lease, licence, easement, or profit and the variation of the terms of any other alienation as hereinbefore defined."

5.3 Purpose

All instruments of alienation of Niuean land must be confirmed by the court and registered before they take effect.

5.4 Who may apply

- a party to an instrument of alienation may make an application to the court for confirmation of that instrument
- the registrar, if Crown land is leased or if the Government is leasing Niuean land from the land's Magafaoa
- the Leveki Magafaoa for all leases with parties leasing land from the Magafaoa
- the manager of the Niue Development Bank initiates the application for a charging order or a variation of a charging order or a discharge of a charging order.

Note

This application is usually accompanied by an Application for determining title to and interest in Niuean land. To ensure the applications are heard together when the case goes to court, please file this application and the accompanying application for determining title to and interest in Niuean land together on the same file.

5.5 Form

There is no prescribed application form. Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

Application for confirmation of alienation

5.6 Fees

The filing fee for an application for confirmation of alienation of land is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

5.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file.

5.8 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application
- Setting up a land file
- Guidelines Land Court applications.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 6. Application for the appointment of a receiver

6.1 Legislative references

- Land Act 1969, s 33
- Land Court Rules 1969, [Schedule 2](#)
- Niue Land Court Bench Book, [Chapter 5](#)

6.2 Purpose

The court may enforce a charge or security charge by appointing a receiver in respect of the land or interest charged.

The receiver's role is to take possession of the land and receive all rents and profits associated with the land, so that the terms under the charge may be satisfied.

6.3 Who may apply

- The holder of a security charge (the Crown or Niue Development Bank).

6.4 Form

There is no application form for appointing a receiver. Follow the process set out under [Rules for applications](#).

6.5 Evidence needed to support application

- Proof of the default of the terms of the charge

6.6 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

6.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp.
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file.

6.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 7. Application for occupation order

7.1 Legislative references

- Land Act 1969, s 31
- Land Court Rules 1969, Schedule 2
- Niue Land Court Bench Book, Chapter 6

7.2 Purpose

An occupation order enables the personal use of the land in question by a person or persons for their lifetime or for a specified term.

7.3 Who may apply

- the Leveki Magafaoa
- the member of the Magafaoa desiring the order
- an appointed agent on behalf of a disabled person.

7.4 Form

Applications must be completed in legible handwriting or typed, and all questions must be answered. Give the applicant the following form to complete in either Niuean or English:

Application for an occupation order

7.5 Evidence needed to support application

- a description of the area to be occupied
- a plan of the area to be occupied
- written consents of members of the Magafaoa **or**
- minutes of meetings approving the application.

7.6 Fees

The filing fee for any application to determine title and interest is set out in the fees schedule – refer to Land Court Rules 1969, Schedule 2. Item 3.1 sets the fee at \$10, plus 12.5% NCT.

7.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file.

7.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 8. Application for order of partition

8.1 Legislative references

- Niue Amendment Act (No2) 1968, s 44
- Land Act 1969, ss 34-39
- Land Court Rules 1969, rr 12 and 13, Schedule 2
- Niue Land Court Bench Book, Chapter 4, part 7

8.2 Purpose

Partition is the division of the land to create new titles or blocks. Partition may be required if a member of the Magafaoa wants the land to build a personal residence. The Land Court may make a partition order under sections 34-39 of the Land Act.

8.3 Form

Applications must be completed in legible handwriting or typed, and all questions must be answered. Give the applicant the following form to complete in either Niuean or English:

Application for partition

8.4 Evidence needed to support application:

- consent to the partition by Leveki Magafaoa if not deceased, or
- consent to the partition by the Magafaoa and for the appointment of Leveki Magafaoa
- the Magafaoa meeting minutes and supporting signatures
- statement and/or supporting submission by applicant including grounds
- relevant supporting evidence and attachment, including the certificate of title of the land to be apportioned.

8.5 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

8.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file.

8.7 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application

- Setting up a land file
- Guidelines Land Court applications.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 9. Application for exchange order

9.1 Legislative references

- Niue Amendment Act (No2) 1968, s 44
- Land Act 1969, s 40
- Land Court Rules 1969, r 16, Schedule 2
- Niue Land Court Bench Book, Chapter 4, part 7

9.2 Purpose

Any interest in Niuean land may be exchanged for an interest in any other Niuean land or in Crown land.

9.3 Who may apply

- any Niuean claiming to be interested in Niuean land
- any person authorised by Cabinet on its behalf
- an appointed agent on behalf of a disabled person.

9.4 Form

There is no application form for appointing a receiver. Follow the process set out under Rules for applications.

9.5 Evidence needed to support application:

- consent to the exchange by the Magafaoa
- consent to the exchange from the Minister for any exchange of Crown land
- the Magafaoa meeting minutes and supporting signatures
- statement and/or supporting submission by applicant including grounds
- relevant supporting evidence and attachments.

9.6 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

9.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file.

9.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 10. Selling Niuean land to the Crown

10.1 Legislative references

- Land Act 1969, s 43
- Land Court Rules 1969, r 43, Schedule 2

10.2 Purpose

Niuean land cannot be bought or sold, except by the government for public purposes, and then only subject to the consent of the titleholders.

10.3 Who may apply

- any Niuean claiming to be interested in Niuean land
- any person authorised by Cabinet on its behalf
- an appointed agent on behalf of a disabled person.

Note

This provision will not be used often as the Crown prefers to take the land by warrant and then compensate the Magafaoa.

10.4 Form

There is no application form for Niuean land to the Crown. Follow the process set out under **Rules for applications**.

10.5 Fees

No fee shall be payable on any application by the Crown, the Minister, Cabinet, or the Registrar.

The filing fee from an applicant other than the Crown for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

10.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check the application fee if required has been paid and a receipt given
- register the application
- set up the file.

10.7 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 11. Application for a reservation order

11.1 Legislative references

- Land Act 1969, ss 44 – 46
- Land Court Rules 1969, Schedule 2
- Niue Land Court Bench Book, Chapter 4, part 9

11.2 Purpose

Land may be set aside as a reservation for the common use of the Magafaoa for such purposes as a burial ground, fishing ground, village site, landing place, place of historic interest, source of water supply, Church site, building site, recreation ground, bathing place or any other purpose.

11.3 Who may apply

- the Leveki Magafaoa (with the majority of the members' consent)
- any Niuean claiming to be interested in Niuean land
- any person authorized by Cabinet on its behalf may apply for the revocation or variation of a reservation order
- an appointed agent on behalf of a disabled person.

11.4 Form

There is no application form for a Reservation order. Follow the process set out under **Rules for applications**.

11.5 Evidence needed to support application

- consent to the reservation order by Leveki Magafaoa if not deceased, or
- consent to the reservation order by the majority of the Magafaoa who are ordinarily resident in Niue
- confirmation that the members of the Magafaoa who are not ordinarily resident in Niue will not suffer undue hardship as a result of the proposed order
- Magafaoa meeting minutes and supporting signatures
- statement and/or supporting submission by applicant explaining the purpose of the reservation
- An outline of the boundaries of the land to be included in the reservation.

11.6 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

11.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file.

11.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 12. Application for an order vesting land for Church purposes

12.1 Legislative references

- Niue Amendment Act (no 2) 1968, s 26
- Land Court Rules 1969, Schedule 2
- Niue Land Court Bench Book, Chapter 4, part 10

12.2 Purpose

Leveki Magafaoa or landowners may apply to have land that has been given or set aside for religious purposes to be vested in any body corporate to hold and administer for the Church.

12.3 Who may apply

- The Leveki Magafaoa (or where there is none the owners of the land)
- An appointed agent on behalf of a disabled person.

12.4 Forms

There is no application form for a vesting order. Follow the process set out under **Rules for applications**.

12.5 Evidence needed to support application

- All records, instruments, reservations and generally all acts of authority relating to the giving or setting aside of land for Church purposes in force at 1 November 1969
- A statement from the applicant confirming:
 - The land has been at any time given or set aside by the Leveki Magafaoa or - where there is no Leveki Magafaoa - by the owners exclusively for Church purposes for the benefit of its adherents; and
 - The Church is a Christian Church; and
 - The Leveki Magafaoa or owners are willing that the land be exclusively used for an unlimited period of time; and
 - No sufficient alienation or disposition of the land by way of lease or otherwise has been made to give effect to the gift.

12.6 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

12.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file.

12.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 13. Application for an easement

13.1 Legislative references

- Niue Amendment Act (No 2) 1968, s 47 and 89
- Land Court Rules 1969, Schedule 2
- Niue Land Court Bench Book, Chapter 4, part 11

13.2 Purpose

An easement is a right held by a person or persons over land owned by another. The court may declare any land be subject to an easement. This allows another person to travel over the land to gain access to other land, subject to any conditions it prescribes.

13.3 Who may apply

- Any Niuean claiming to be interested in Niuean land
- Any person authorised by Cabinet on its behalf
- An appointed agent on behalf of a disabled person.

13.4 Forms

There is no application form for an application for easement. Follow the process set out under **Rules for applications**.

13.5 Evidence needed to support application

The applicant must make a submission in writing to go with the application for an easement. The submission must explain the following where relevant to the claim:

- the reason the claim is being made
- the boundaries of the portion of the land being accessed
- the names and the approximate location of cultivations, villages, and burial places (with names of relatives of the claimant and persons included in their claim who have been there, and any other places or marks of historical interest)
- evidence/record of discussions with adjacent landowners.

13.6 Fees

The filing fee for an application for appointment for an easement is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

13.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file.

13.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 14. Application for an order vesting land from a closed road to owners of adjoining land

14.1 Legislative references

- Niue Amendment Act (No 2) 1968, Part 7, Section 90
- Land Court Rules 1969, r 43
- Niue Land Court Bench Book, Chapter 4, part 12

14.2 Purpose

Where any road has been closed under s 90 the Land Court may vest the whole or any portion of the closed road in the Leveki Magafaoa or owners of any adjoining land that was Niuean land at the time the road was constituted: s 90(2) Amendment Act.

14.3 Who may apply

- Applications for the order may be made by Cabinet. To date there have been none.

14.4 Forms

There is no application form for a vesting order. Follow the process set out under Rules for applications.

14.5 Fees

No fee shall be payable on any application by the Crown, the Minister, Cabinet, or the registrar.

14.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- register the application
- set up the file.

14.7 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Chapter 15. Application for an interlocutory injunction

15.1 Legislative references

- Niue Amendment Act (No 2) 1968, s 47
- Land Court Rules 1969, Schedule 2
- Niue Land Court Bench Book, Chapter 4, part 13

15.2 Definition

- **Ex parte** - The term ex parte is a Latin phrase meaning “something made in the interests of one side only”. So an ex parte application is on the application of one side only and the other parties are not informed.
- **Interlocutory** – provisional, step in the proceedings.

15.3 Purpose

An interlocutory injunction can be granted before or during proceedings. The purpose of an interlocutory injunction is to keep the existing state of affairs until a decision is given on the substantive merits of the case.

Common situations where injunctions are sought are to prevent another person from clearing land for planting crops or further planting on land that has been cleared for that purpose, or to prevent the burial of a deceased person on a particular piece of land.

15.4 Who may apply

- Any Niuean claiming to be interested in Niuean land
- Any person authorised by Cabinet on its behalf.

15.5 Mode of application

An interlocutory application may be made ex parte (without notice to the other party) in cases of urgency and if the applicant would otherwise suffer harm to proceed on notice.

The applicant must satisfy the judicial officer that it is in the interests of justice to proceed ex parte.

Because of the urgency, the application is referred to a judge immediately.

Where possible the application should otherwise be made on notice. If the applicant is not in Niue, the application can be emailed to the court or a family member can file it on their behalf.

15.6 Forms

Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

Application for an Injunction

15.7 Evidence needed to support application

- under the ex parte process, the applicant must make full disclosure to the court of all known relevant circumstances

- statement and/or supporting submission by the applicant, including specific grounds and section of the law
- site plan and location of area affected by the application – title or not
- the nature of the order sought by the applicant
- serving of notice mode whether the applicant or the Land Court.

15.8 Application process

Under the on notice process, the application is served upon the respondent.

Staff will write a letter to the respondent setting out the grounds for the application. The letter advises the other party that they must desist until the application is determined by the court.

The registrar will determine who has jurisdiction to hear the application in court – whether it is a judge or a resident land commissioner.

If there are ongoing disputes arising from the application, a judge's help is sought. Registry staff will email the judge in New Zealand for direction. Attach the application and supporting documents provided by the applicant and outline the dispute. Ask for the judge's directions.

The judge will give directions about what the parties should do until the case is decided in court.

15.9 Where the resident land commissioners determine an on notice interlocutory application

Follow the same process as above to serve the application and issue a letter to the other party.

A response is needed from the respondent and land commissioners are called to hear the application.

15.10 Fees

The filing fee for an application for an interlocutory injunction is covered in the fees schedule for an application that may be filed ex parte – refer to Land Court Rules 1969, Schedule 2. Item 1 sets the fee at \$10, plus 12.5% NCT.

15.11 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- ensure the application fee has been paid and a receipt given
- register the application
- set up the file.

15.12 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application
- Setting up a land file
- Guidelines Land Court applications.

Chapter 16. Ex parte applications

16.1 Legislative references

- Land Court Rules 1969, rr 12(12), 16(1)(a), 17(1), 20, 29(1), Schedule 2
- Niue Land Court Bench Book, Chapter 4, part 14

16.2 Definition

- **Ex parte** - The term ex parte is a Latin phrase meaning “something made in the interests of one side only”. So an ex parte application is on the application of one side only and the other parties are not informed.

16.3 Purpose

An interlocutory application may be made ex parte (without notice to the other party) in cases of urgency and if the applicant would otherwise suffer harm to proceed on notice, or where there is no prejudice to the other party.

Ex parte applications are an efficient way to address administrative matters like issuing a witness summons.

16.4 Forms

Refer the applicant to the prescribed Form 1 (Ex Parte) Application to the High Court found in the schedule of the Land Court Rules 1969. The form may be completed in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered.

16.5 Evidence needed to support application

- the application must be marked “ex parte”
- the applicant must clearly state the grounds for their application.
- state the statutory provision, section of the Act and rule that is relied upon to make the application
- the nature of the order sought by applicant.

If in the opinion of the Registrar, an application is not properly made, they may refuse to accept it. All ex parte applications to date have been dealt with by Judges.

Judges sometimes determine that the matter should not be ex-parte. In some cases, they direct the application to be served on the parties and follow the usual on notice process.

16.6 Fees

The filing fee for an application for an ex parte application is covered in the fees schedule for any application that may be filed ex parte – refer to Land Court Rules 1969, Schedule 2. Item 1 sets the fee at \$10, plus 12.5% NCT.

16.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- ensure the application fee has been paid and a receipt given
- register the application
- set up the file.

16.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Chapter 17. Applications from—and relating to—the Registrar

17.1 Legislative reference

- [Land Act 1969, s 52](#)
- [Niue Land Court Bench Book, Chapter 4, part 15](#)

17.2 Purpose

The registrar may state any case or reserve any question for the consideration of the court.

Any person aggrieved by a decision of the registrar may appeal to the court, which may confirm, quash or vary any decision made by the registrar.

17.3 Who may apply

- Any person aggrieved by a decision of the registrar

17.4 Forms

There is no application form relating to a registrar's decision. Follow the process set out under **Rules for applications**.

17.5 Evidence needed to support application

- Any information relating to land or to any interest in land
- If the applicant has the custody or control of any duplicate instrument concerned, they must bring it into the Land Registry to be endorsed, cancelled, amended, inspected or otherwise dealt with as the case requires.

17.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- register the application
- set up the file.

17.7 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Chapter 18. Application for adoption orders

18.1 Legislative references

- Niue Amendment Act (No 2) 1968, ss 92-93, 95, 97, 98 and 100
- Adoption Act 1955
- Niue Land Court Bench Book, Chapter 4, part 16

18.2 Who may apply

- Any person may make an application, whether living in Niue or not (note: spouses can make a joint application).

18.3 Forms

There is no application form for an adoption order. Follow the process set out under **Rules for applications**.

18.4 Evidence needed to support application

The applicant must provide evidence to satisfy the court that:

- The child to be adopted was under 21 years old when the application was filed
- The applicant—or at least one applicant in a joint application—is 25 years or older and is at least 21 years older than the child, or is the mother or father of the child
- An unmarried applicant is at least 30 years older than the child
- Where the child is a girl and the sole applicant is male, the applicant is the father of the child, or there are special circumstances which justify the order
- The child, if over 12 years, consents to the adoption.

The court will also seek a report from Cabinet or a Cabinet nominee confirming the above and testifying to the applicant/s fitness to adopt the child.

18.5 All living parents of the child must consent in writing to the adoption unless:

- the child has been deserted by that parent; or
- the parent is unfit to have the care and custody of the child; or
- the consent of that parent should be dispensed with for any other reason.

The applicant must make the reasons for not requiring consent clear.

18.6 Consent must be witnessed by one of the following:

- A Commissioner of the High Court
- A solicitor of the High Court of New Zealand
- The Registrar [or Deputy Registrar] of the High Court
- A postmaster
- The financial secretary

- A medical officer.

Where the application is made by either a husband or wife alone, their spouse must consent to the application. If the couple is living apart, they must provide evidence to satisfy the court they are living apart and that separation is likely to be permanent.

18.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- register the application
- set up the file.

18.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Remember

If the applicant does not have all the necessary information with them, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 19. Varying or discharging adoption orders

19.1 Legislative references

- Niue Amendment Act (No 2) 1968, Part VIII, ss 100 (1)-(5)s
- Adoption Act 1955
- Niue Land Court Bench Book, Chapter 4, part 16

19.2 Purpose

Parties may apply to the court to discharge an adoption order only if the adoption order was made by mistake caused by a misrepresentation made to the court or any person concerned.

19.3 Who may apply

The adoptive parent/s or child if:

- the adopted person is under the age of 18 and
- the adopted person is living and domiciled in Niue and
- every living adoptive parent is domiciled in Niue.

It does not matter if the adoption was made in or outside Niue.

19.4 Forms

There is no application form for discharge of an adoption order. Follow the process set out under **Rules for applications**.

The application is made in writing by the adoptive parent or the adopted child.

19.5 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- register the application
- set up the file.

19.6 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file.

Remember

If the applicant does not have all the necessary information with them, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

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Chapter 1. Pre-application investigation and search

1.1 Legislative references

- Niue Land Registration Regulations 1969, r 28
- Niue Land Courts Bench Book, Chapter 2, s 7, and Chapter 3, s 8.2
- Land Court Rules 1969 Schedule 2 – Fees schedule

1.2 Purpose

Before any application is filed, parties are required to provide details and background pertaining to the land subject to their application. The registry staff will provide reasonable assistance to the parties to enable them to complete a search, but no search may be made by the registrar or court registry staff except as approved by the Resident Commissioner by special arrangement. No responsibility shall be incurred by the registrar or staff for the accuracy of any information obtained by any such search.

1.3 Procedure

Applicants are required to file their application along with all the information and copies of any titles or court proceedings to support their application.

Parties can seek assistance from court registry staff to reference previous proceedings and obtain certified copies of documents from existing files.

Staff can use the case tracking system (CTS) to search for previous proceedings under the same land name. For any applications prior to August 2021, parties must manually search the land registers to reference and obtain copies of previous orders.

1.4 Related topics

- Registering an application.

Chapter 2. Registering an application

2.1 Legislative references

- Niue Amendment Act (No 2) 1968, s 41
- Land Court Rules 1969, rr 13 and 44, Schedule 2 – Fees schedule
- Niue Land Courts Bench Book, Chapter 2, s 7

2.2 Purpose

Once an application has been vetted and accepted, it must be assigned a case number. It is a legal requirement that all applications are then recorded in the land register.

2.3 Procedure

Obtain the number for each individual application by registering it in the case tracking system (CTS). Separate training is provided on how to use CTS.

Once registered in CTS, endorse the application number on all documents.

Make a corresponding entry into the manual land register application – see r 13(3) of the Land Court Rules 1969.

No application is to be registered unless the fee has been paid.

The register records the following initial details:

- application number
- date filed
- applicant's name
- land name
- village
- nature of application.

As the application progresses it will be updated with:

- surveyor
- investigation date
- Gazette date
- court date
- disposal date
- minute book reference
- remarks.

Create a file checklist if one has not already been provided. Update details for steps 1-5 of the checklist.

2.4 Applications made by email

Applications may be submitted by email for vetting.

Follow the general application procedures to check if all requirements for acceptance have been met.

When an application is received by email, print out the email and all attachments and ensure that they are date stamped with the date of receipt of the email. The emailed documents should be retained to be placed on file.

If the emailed application and supporting documents are in order:

- email or contact the applicant to advise that they are now able to file the original application and supporting documents.
- advise that they must pay the prescribed fee – see the fees schedule. Provide the registry account details so they can deposit the filing fee directly into an account. Account details are set out below at 2.5.
- advise that confirmation of the deposit in payment of the filing fee must accompany the original of their application.
- advise the applicant that their application cannot proceed until the originals are received and payment has been verified.

If the application and supporting documents are deficient:

- email or contact the applicant and advise them of what more is required before the application can be accepted.
- advise the applicant that until the defects are corrected, their application has not been accepted and no further action will be taken.

Place all the emailed documents into a folder endorsed with the applicant's name pending receipt of the original documents and confirmation of payment.

The application is only registered when the original documents are received, and confirmation of payment has been made.

The applicant can otherwise organise for a family member or representative to lodge the original application and supporting documents on their behalf and make payment direct to the registry office.

2.5 Online payments

Online payments can be made to:

- Niue High Commission in Wellington
Account Number: 03-0104-0837147-00
Westpac

or
- Niue Government
Account No: 03-0104-0837147-02
Westpac
- Reference Account numbers to use:
 - 234-3212 for Land Division for applications
 - 236-3412 for Surveyors - Certificates of Title, and
 - 236-3212 for Surveyors - reflags, plans and map information.

The applicant can send a copy of confirmation of payment with their original documents or the administration officer in charge of financial reporting will print out a statement of any recorded payments that can be used to confirm payment.

Once the application has been registered, the documents should be made into a file.

2.6 Related topics

- Setting up a file.

Chapter 3. Setting up a land file

3.1 Legislative references

- Niue Land Courts Bench Book, Chapter 3, s 7.1

3.2 Purpose

As soon as an application has been registered, a case file is set up to store all the documents related to each case.

All documents are to be placed on file under the correct tabs to ensure the judge or commissioners can quickly locate and access clearly identified information.

3.3 Procedure

You will need a file-rite folder, a file coversheet and the tabbed dividers.

All documents are to be date stamped and placed onto the file in date order, with the most recent documents on top for each tab divider.

3.4 File coversheet

Create a file cover-page following the file cover-page template provided.

Fill in the information on the coversheet with:

- the nature of the application
- date of filing of application
- application number
- land district location
- applicant's name
- legislative authority for application.

Where there are two or more related applications eg: s 10 Application for Determination of Land Title and s 14 Appoint Leveki Magafaoa, make up one file and ensure that the coversheet is endorsed with the full details of each application separately – refer to the file cover-page template provided.

Further provision is made on the coversheet to record any Gazette Notices that will occur later in proceedings.

The cover-page is inserted into a plastic adhesive slip and attached to the outside of the file.

3.5 File coversheet abbreviations

The table below lists abbreviations used to denote applications and orders made on the file coversheet.

DT	Application for Determination of Title
LM	Application for Appointment of Leveki Magafaoa
RLM	Application to Remove Leveki Magafaoa
JLM	Application for a Joint Leveki Magafaoa
CLM	Application to Change Leveki Magafaoa
OO	Application for an Occupation Order
OA	Application for an Order Access
L	Application for Confirmation of Lease
CHR ORD	Application for Confirmation of Charging Order
OCLD	Application to Discharge Charging Order
SCV	Application for Variation of Lease
LS	Application to Surrender of Lease
OP	Application for a Partition
RCL	Registrations of Crown Land
RNL	Registrations of Niuean Land
W	Warrant
CT	Certificate of Title
CJ	Chief Judge
J	Justice
LC	Land Commissioners
C	Commissioners
CA	Confirmation of Lease
COA	Court of Appeal
LC	Local Court

3.6 Tab dividers

There are six-tab dividers, named:

- Applications
- Search
- Correspondence
- Directions and memorandum
- Court minutes
- Orders.

The documents to put under each tab are identified in the table below.

Applications	<p>Application:</p> <ul style="list-style-type: none"> • emailed copy of application, • applicant’s statement and supporting submission, • supporting documents, including any: <ul style="list-style-type: none"> • conditions/terms of the Leveki Magafaoa • consent from the Magafaoa for appointing a Leveki Magafaoa • family meeting minutes and their supporting signatures • evidence/record of discussions with adjacent landowners • any other proof or signs of occupation of or connection with the land by the claimant and other persons included in their claim. • objections, and • notice of intention to appear
Search	<p>Provisional survey plan:</p> <ul style="list-style-type: none"> • land investigation report, • ancestry and genealogy records, • certificate of title, and • the names and the approximate location of cultivations, villages, burial places, with names of relatives of the claimant and persons included in their claim who have been there, and any other places or marks of historical interest.
Correspondence	<p>Letters:</p> <ul style="list-style-type: none"> • emailed correspondence, • notice of court sitting,

	<ul style="list-style-type: none"> • Gazette advertisements, • statement of service, • referrals to judicial officers, and • receipts/statements for confirmation of payment of filing fees.
Directions and memorandum	<p>Directions made by the judge or land commissioners in the course of the proceedings:</p> <ul style="list-style-type: none"> • memoranda made by the judge or land commissioners in the course of the proceedings.
Court minutes	<p>Court minutes:</p> <ul style="list-style-type: none"> • copy of any previous court minutes from other related applications.
Orders	<p>Court's decision regarding the application.</p> <p>Copies of any previous court orders from other related applications.</p>

Update the existing land application checklist at step 6 and place the checklist as the first document on the inside of the folder, on top of the application tab divider.

After the file is made up, if the application is for determination of land title or interest, partition or appointment of leveki, it is listed for land investigation. Other applications that do not require a survey are listed directly for hearing.

If the application is for charge, lease confirmation of alienation, change of leveki, occupation, exchange, reservation, easement, adoption, or vesting land, it is listed directly for a hearing.

If an application for injunction is made for titled land it proceeds to a hearing – applications for untitled land must go through the land investigation process.

3.7 Related topics

- Land investigation report and provisional plan.

Chapter 4. Land investigation report and provisional plan

4.1 Legislative references

- Niue Amendment Act (No 2) 1968, s 22
- Land Act 1969, ss 10, and 47-49
- Niue Land Courts Bench Book, Chapter 3, s 2.1

4.2 Purpose

The court may require supporting information relating to the property in question, including information gathered from surveying it – see s 10 of the Land Court Act 1969.

Under the land investigation programme, after the application has been filed and registered, the registrar or deputy registrar will authorise court staff to enter onto the land to complete a land investigation and a preliminary survey.

A provisional plan is drawn up to use during the court proceedings along with the investigation report and a final survey is required to put into effect the orders made by the court and to produce the certificate of title.

4.3 Procedure

After an application is registered and the file made up, the application is listed for a site visit to allow for completion of the investigation report by a deputy registrar or court administrator and for the surveyor's provisional plan.

After discussion with the surveying technical officer, the deputy registrar in conjunction with the senior court administrator will confirm the land investigation programme, listing the applications, dates and times for site visits. This is the same information contained in the land investigation radio announcement.

Under cover of a letter, forward a copy of the land investigation programme to the applicant and/or any occupier. The appointment date should be at least two weeks from the date of the letter, to allow the Leveki or occupier reasonable time to prepare for the visit.

The court administrator will contact the Broadcasting Corporation of Niue (BCN) and confirm the total cost for the announcements.

The confirmed programme and invoice/cost is sent to the administration officer who will request a purchase order from the Treasury Department. The purchase order is usually received on the same day as the request is made. On receipt of the purchase order, the court administrator will hand deliver or email both the purchase order and the confirmed investigation programme to the BCN to initiate the public announcements in advance of the site visit.

The public announcement will contain the information from the land investigation programme and will run over a week.

A copy of the programme is given to the surveying technical officer who will assign a surveyor. The surveyor will do their own search and investigation in preparation for the site visit, checking mappings, boundaries, adjacent surveys, and markers – see s 47 of the Land Act 1969.

The surveyor will organise transport for the court administrator or deputy registrar and arrange for chainmen to attend to assist with marking and measuring the boundaries of the land affected by the application.

The court administrator must ensure that the authority to enter any land is completed and signed by the registrar or deputy registrar prior to the site visit – see s 49 of the Land Act 1969. The signed authority is given to the applicant and/or occupant at the site before the site investigation and preliminary survey begin. A copy is retained on the file.

During the site investigation, the court administrator or deputy registrar will seek information about the land from the Leveki and/or occupier to form the basis of the investigation report for the court hearing. This will include details about the boundaries of the land claim and its historic usage. Anyone who is present will be heard - if necessary, the court administrator or deputy registrar will advise and assist them to complete a notice of intention to appear or file a written statement. Particular attention should be paid to any matter in dispute. All these details will be noted so that the court administrator or deputy registrar can compile a full investigation report on return to the office.

On return to the office, the surveyor will draw up a provisional plan of the surveyed land, including the applicant's name and application number. This may be able to be completed immediately but never-the-less is expected to be completed within a week of the site inspection. If necessary, the surveyor, deputy registrar or court administrator will contact the applicant to attend the office and check the provisional plan and sign that it is correct. Both the surveyor and the applicant must sign the provisional plan before it is put on file and placed under the search tab divider. If the applicant does not agree with the initial provisional plan drawn up, another site visit may ensue, requiring advertisement and authority again.

The court administrator or deputy registrar writes up their investigation report. The report is placed on the file under the search divider tab and may be made available to the parties on request.

Once the investigation report and provisional plan are completed the matter is listed as ready for allocation of a court hearing date.

4.4 Related topics

- Court hearing – allocate a date of hearing
- Court hearing – prepare for court hearing
- Court hearing – final land survey and Certificate of Title.

Chapter 5. Allocate a date of hearing

5.1 Legislative references

- Land Court Rules 1969, r 19
- Niue Land Courts Bench Book, Chapter 2, s 6.2

5.2 Purpose

The Chief Judge will determine when the court will sit and it is the registrar or deputy registrar's responsibility to allocate dates of hearings for all outstanding cases that require a hearing.

Both the High Court Judges and land commissioners have shared jurisdiction to hear and determine land applications.

Once the case has been added to the ready for hearing list, the registrar or deputy registrar, and court administration officer will allocate the dates of hearing for all applications.

5.3 Jurisdiction

Judges will sit twice a year, April-May and November. Otherwise, matters are set before the land commissioners who will sit according to the workload demand and as arranged by the registrar or deputy registrar.

Not less than five commissioners will be convened to hear applications for ownership, possession, occupation utilisation, determine right, title, estate interest title or interest in any land or alienation or to determine interests of owners or occupiers, to authorise survey of land.

Otherwise, two commissioners have jurisdiction to determine all other matters, eg: appointment of Leveki Magafaoa, claim to recover damages, injunctions, to create easement or any other matter relating to land interests (unless legislation expressly provides for a commissioner to sit alone).

To be able to determine a full list of court applications, it is the normal practice to convene a panel of five members to hear both a disputed matter along with unopposed or consented applications.

5.4 Confirming the schedule

The Chief Judge will determine and advise the registrar whether the workload requires one or two judges to attend.

A draft of the proposed schedule of cases to be heard is sent to any sitting judges and the land commissioners for their confirmation, checking for any conflict of interest. Applications are re-scheduled as they direct.

The court administration officer, registrar or deputy registrar will have the confirmed court schedule sent via the registry email to the "government email" distribution list that includes government departments and the chamber of commerce.

Then the registrar:

- sends a copy to the Office in Parliament to have the schedule posted to the government website,
- attaches it to the public notice board at the registry reception,

- issues it with notice of hearing to the parties to the proceedings, and
- advertises it by notice in the Government Gazette.

5.5 Related topics

- Court sitting – notify Parties of court hearing
- Court sitting – Gazette Notices.

Chapter 6: Court sitting – Gazette Notices

6.1 Legislative references

- Niue Amendment Act (No 2) 1968, s 46(2)
- Land Court Rules 1969, rr 10(2) and 19

6.2 Purpose

The registrar or deputy registrar must have all applications to be heard, listed and published in the Government Gazette to ensure that all affected parties to an application are notified of a court sitting and hearing of a land application.

6.3 Procedure

Once the court schedule has been confirmed, the court administration officer will prepare the Gazette notice. The Gazette notice lists the:

- applications to be heard,
- date and time of hearing,
- venue, and
- presiding judicial officer.

The Notice should be published in both Niuean and English languages. See the attached examples of Gazette Notices for each jurisdiction.

In the Gazette Register, allocate the next consecutive number for the notice, and record the details from the notice in the Gazette Register.

Prepare the Gazette Notice and give it to the registrar for signature.

The Gazette must be published with at least 14 days' notice to allow any interested party the opportunity to file a notice of intention to appear and be heard – see r 19 of the Land Court Rules 1969.

A copy of the Gazette is:

- emailed or posted to the parties, the lawyers and other affected parties along with the notice of court sitting,
- forwarded to the judge along with the case summary reports and copy of the files,
- placed on the public notice board at the registry reception,
- published in the “Niue Star” newspaper,
- sent by the registrar to the office in charge of the government website and posted there.

To advertise the Gazette in the Niue Star, the court administrator will contact the newspaper to confirm the total cost for the Gazette Notice publication.

On receipt of an invoice, the Gazette Notice and invoice are sent to the administration officer who will request a purchase order from the Treasury Department. Purchase orders are obtained within a day. On receipt of the purchase order, the court administrator will either email or hand deliver both the purchase order and the Gazette programme to the Niue Star to initiate publication of the Gazette in advance of the court sitting.

6.4 Related topics

- Court sitting – court hearing
- Court sitting – notify parties of court hearing.

Chapter 7: Court sitting – notify parties of court hearing

7.1 Legislative references

- Land Court Rules 1969, rr 7, 19 and 21
- Niue Land Courts Bench Book, Chapter 3, s 8.3 – s 8.4

7.2 Purpose

The deputy registrar is required to give notice of the court sitting to all interested parties to the application to ensure they have the opportunity to be heard, before a decision is made by the court.

7.3 Procedure

Notice of the court sitting is prepared by the court administrator in dual languages then signed and issued by the registrar or deputy registrar.

It is sent by email or hand delivered with a copy of the schedule at least three days before commencement of the hearing to:

- the applicant and lawyers,
- any party who has filed a notice of intention to appear,
- any other person the registrar thinks fit, or
- as directed by the judge or land commissioner

Service is governed by r 7 of the Land Court Rules 1969 and includes provision:

- for service on agents for any person absent from Niue, and
- for service on a personal representative of any deceased party.

It also allows for the court to make directions in other circumstances.

Attach a copy of the Gazette Notice and retain a copy of the notice of sitting for the file placed under the correspondence tab divider.

If the notice of sitting is being hand-delivered, also attach a copy of the notice of service and retain a copy for the file – refer to Service.

7.4 Related topics

- Court sitting – court hearing
- Service.

Chapter 8. Court sitting – prepare summary report for court hearing

8.1 Legislative references

- Niue Land Courts Bench Book, Chapter 3, s 2.1

8.2 Purpose

In preparation for the court sitting the deputy registrar and court administration officer will research the background of the application and provide a summary of the application/s for the judge or land commissioners.

8.3 Procedure

After the provisional plan is completed, to prepare the summary use CTS to search for related applications pertaining to the land or issue forming the basis of proceedings.

Also check the application for references to previous applications or orders. Check the land register, minute book and land registrations for any related files.

Confirm the details and ensure certified copies of previous applications and decisions are on file.

Assemble all information in chronological order and prepare the summary report. Three examples of summary reports are provided in the following appendix.

It is good practice to:

- head the summary with the land name,
- for each previous application, detail the name of the applicant, application numbers and application type, the land name and CT reference number, land district and date of order/application and any resulting outcomes or orders, and
- record any other detail that could assist the judge or land commissioner.

Sign and date the summary report, scan and load it into CTS. File the original under the search tab divider.

Ensure all other documents including related written agreements, notices of publication and service, maps, plans of survey carried out or sketch plans prepared during inspections are scanned and loaded into CTS.

This will be a final opportunity for you to check that all documents in relation to the current application are in order. Check that the application is prepared, signed, sworn, filed, published, the date, time and place of hearing duly notified and served on all parties.

Update file check list.

If the hearing is being conducted by a judge, upload the file and send it to the judge two weeks prior to the hearing to allow them to prepare.

The original files are progressively delivered at least two days in advance of the hearing to the judge’s hotel for them to read. Files for hearing on Monday and Tuesday are delivered to their hotel on their arrival in Niue and the remaining files delivered each subsequent day after court. Expect the judge to make contact or call into the office if they require any further clarification.

Local land commissioners will attend the office within two weeks prior to the hearing to view the files.

Have the files ready and make all related files and registers available for perusal and examination by the court.

Immediately inform the court on any development likely to affect the hearing of the case, for example, the non-service of documents or notices on parties.

Attend to any arrangements relating to the hearing as the court may direct.

Chapter 9. Court sitting – court hearing

9.1 Legislative references

- Niue Amendment Act (No 2) 1968, s 43
- Land Court Rules 1969, rr 23(1), and 27
- Niue Land Courts Bench Book, Chapter 3, s 1, s 2.1, s 6.1, s 7.2, s 8.4, s 8.5, and s 10.

9.2 Purpose

The Registry provide support to the judiciary to conduct the court sittings. A court clerk will be assigned for each court sitting to deliver the courtroom ritual, call the cases and ensure that the court minutes are captured.

9.3 Procedure

- Check the file to ensure that any pre-court directions for the court sitting have been attended to and the proceedings are ready.
- Ensure that the venue is set up, clean and tidy ready to begin.
- Test the recording equipment to ensure it is working and ready to record.
- Before court begins ascertain the names of all parties, lawyers, representatives, or agents and who they are acting for. Advise the judiciary if there are unexpected attendees.
- Enquire from the public or attending parties who is willing to deliver the opening prayer. It can be delivered by a member of the public or if necessary, by the land commissioners or the deputy registrar and the court administrator if required.
- Be punctual and ensure you are ready to start the court on time.
- Address the land commissioners as “Your Worships”. A judge is addressed as “Your Honour”.
- Lead the panel or the judge into courtroom and ask the court to stand: “All stand for their Worships/the Judge”.
- Wait until they are seated and announce: “This sitting of the High Court Land Division for [date] is now in session”.
- Deliver the opening prayer.
- Introduce the commissioners and hand over to them to open and address all the parties.
- Call the first case and invite parties to be seated.
- During the proceedings be ready to:
 - swear any party or witness if they are required to give evidence – see attached forms of oaths
 - collect any fresh written statements or further documents from the parties and hand them to the judiciary
 - read any statements as directed

- provide interpretation and explanation of aspects of the proceedings for the parties where necessary
- record any exhibits produced.
- Try to anticipate what the judicial officers may require and have it ready and available for them. Attend to any directions given by the judicial officers during the proceedings.
- The land commissioners will announce when each case has been concluded and the deputy registrar or court administrator will call the next case and again introduce the parties.
- At the conclusion of the last case, thank the parties, lawyers and land commissioners for their attendance. Enquire if there is anything further from the panel before either the land commissioner, deputy registrar or court administrator delivers the closing prayer.
- Ask the court to rise when the judicial officers exit the court.

9.4 Court minutes

A primary role for the court administrator is to record (digital audio) the minutes of the proceedings. The land commissioners will take their own personal minutes and notes of the hearing.

Record all the proceedings and what is said in the courtroom. Regularly monitor the digital audio recording to ensure it is working properly. Turn the recording on and off as is needed.

At the end of the court sitting, save the recordings to the local server under justice common server, land division in the folders for court minutes for every year and every court sitting under the day of the court hearing, ready to be transcribed.

9.5 Related topics

- Court sitting – court minutes.

Chapter 10. Court sitting – court minutes

10.1 Legislative references

- Land Act 1969, ss 3, 4 and 39
- Niue Amendment Act (No 2) 1968, s 51(1) – s 51(4)
- Niue Land Courts Bench Book, Chapter 3, s 7.2

10.2 Purpose

The registrar is required to keep a register of all land and record the substance of every court order or instrument relating to that land. Minutes of every court hearing are kept and cross-referenced to the application and land.

10.3 Procedure

After the court sitting is completed and the digital record saved, the court administrator will make a typed transcript of the minutes of the hearing.

Double check the minutes to ensure the application details are recorded correctly and the minutes are in the correct format.

Send the drafted minutes to the deputy registrar for final checking and approval to send to the judge for signature.

Once approved, send a copy to the judge to sign or organise for the land commissioners to attend the office and sign the minutes.

Enter the signed minutes into the land minute book and index. Record the volume and folio numbers on the minute.

Place a copy of the minutes on the file and note the file coversheet.

Distribute a copy of the signed minutes to the applicant and parties to the proceedings and complete service details. Note the file check list and record the minutes in CTS.

10.4 Related topics

- Service.

Chapter 11. Final land survey and certificate of title

11.1 Legislative references

- Land Act 1969, ss 10 and 47-49
- Land Court Rules 1969, Schedule 2 – Fees schedule

11.2 Purpose

A final survey is required to put into effect the orders made by the court and to produce the certificate of title – see s 47-49(3) of the Land Act 1969.

An authority to survey enables the production of the final survey plan that forms the basis of the certificate of title, recording the true boundaries of the land and details as determined by the court.

11.3 Procedure

When the court minute has been signed by the judicial officer, there is a two-month stand-down period to allow for any rehearing and/or appeal period to lapse.

Only then is a final survey authorization prepared and signed by the registrar or deputy registrar.

This enables the final survey of the land to be completed by the surveyor who produced the provisional plan. The original authority is given to the senior surveyor or GIS/LIS technical officer and a copy kept for the file. No copy is provided for the applicant.

Record the authority for the final survey in the final survey register book and note the application number on both the authority and on the file coversheet.

The authority is given to the senior surveyor or GIS/LIS technical officer who will organise a date and time to conduct the final survey.

The draftsman or GIS/LIS technical officer will undertake the draughting to draw up the final survey plan according to the details of the order of the court. The finalised survey plan is submitted to the senior surveyor or GIS/LIS technical officer for approval and then given to the registrar to sign.

Once the registrar has signed the final plan, the draftsmen or GIS/LIS technical officer will draw up the corresponding certificate of title and pass this to the land registration officer.

The land registration officer will:

- register the certificate of title in the land register and allocate a CT reference number,
- add the certificate of title to the instrument list and assign an instrument number,
- give the certificate of title to the registrar to sign,
- once signed, place a copy of the certificate of title and the instrument on the file,
- place a copy of the certificate of title and instrument into both the instrument folder and the abstract folder,
- file the original certificate of title into the Originals CT cabinets under the CT number, and

- contact the applicant to collect and pay for the CT. The CT is used for building permits, to secure loan applications and forms part of their own records.

Update the file coversheet and cross reference the CT number.

Chapter 12. Orders

12.1 Legislative references

- Niue Amendment Act (No 2) 1968, s 51
- Land Court Rules 1969, rr 31–32, and Form 6 Order

12.2 Purpose

After the court minutes have been signed, they are sealed and entered into the minute book. Any orders requested can be drawn up and sealed if directed by the presiding judicial officer, but no order will issue until the appeal period has expired.

12.3 Procedure

Judges and land commissioners will complete their own decisions or judgments immediately after the court sitting.

Not all court hearings will require the issue of orders. Some may be directed by the judicial officers following the court hearing.

The registrar or deputy registrar may require any party to submit a draft order for signing and all orders should follow form 6 of the Land Court Rules 1969. Any order should be checked against the decision and court minutes and follow the terms of the judgment.

Any orders that need to be drawn up are signed by the judge who issued the decision.

Update the file coversheet and scan the order into CTS.

12.4 File coversheet abbreviations

The table below lists abbreviations used to denote applications and orders made on the file coversheet.

DT	Application for Determination of Title
LM	Application for Appointment of Leveki Magafaoa
RLM	Application to Remove Leveki Magafaoa
JLM	Application for a Joint Leveki Magafaoa
CLM	Application to Change Leveki Magafaoa
OO	Application for an Occupation Order
OA	Application for an Order Access
L	Application for Confirmation of Lease
CHR ORD	Application for Confirmation of Charging Order
OCLD	Application to Discharge Charging Order
SCV	Application for Variation of Lease
LS	Application to Surrender of Lease

OP	Application for a Partition
RCL	Registrations of Crown Land
RNL	Registrations of Niuean Land
W	Warrant
CT	Certificate of Title
CJ	Chief Judge
J	Justice
LC	Land Commissioners
C	Commissioners
CA	Confirmation of Lease
COA	Court of Appeal
LC	Local Court

12.5 Related topics

- Court sitting – court minutes.

Chapter 13. Directions

13.1 Legislative references

- Land Court Rules 1969, r 12

13.2 Purpose

During the course of the proceedings, you may require a direction of the judicial officer. This may be initiated by application from the parties, the court administrator or deputy registrar seeking a case management direction.

13.3 Procedure

Check that the directions being sought in an application are bona fide. The registrar has power under r 12 of the Land Court Rules 1969 to refuse to accept an application if it is not properly made.

Bona fide applications must:

- Be interlocutory in nature, eg: adjournment or directions as to service, injunction
- require a step by direction from the judge to progress the proceedings.

For both an application and case management direction, prepare a memorandum to the judge explaining why the matter is being referred to them and what direction is being sought – refer to Appendix 27.

In the memorandum record any other details that you think the judge would require. Forward the memorandum, any application and all the supporting documents to the judge for consideration – these should be listed in the memorandum. Retain a copy for the file under the file tab divider for directions and memorandum.

The judge will consider the memorandum, any application and compile their response. Type up the directions if not already provided and issue to the parties.

Scan the direction into CTS and place the original under the directions and memorandum tab divider.

Check for any action that is necessary to be undertaken by the case administrator, eg: direction for parties to hold a family meeting and issue the direction and instructions to the parties as necessary.

Monitor for compliance with the direction prior to any hearing.

Chapter 14. Service of court documents on parties

14.1 Legislative references

- Land Court Rules 1969, r 7

14.2 Purpose

Notices, minutes, directions, and orders are served on all affected parties to ensure that they are given adequate notice to address the court and to be heard and informed of all court decisions, directions and orders.

Where the court is not satisfied that a party has been given sufficient notice for this, the proceedings may need to be adjourned allow them more time.

14.3 Procedure

A notice or other document required to be served on any person may be delivered to them either personally or, where that person is in Niue, by posting it by letter to their last-known place of abode or business in Niue or sent by email.

If the person is absent from Niue, the notice or document to be served may be delivered to their agent in Niue.

If the person is deceased, the notice or document may be served on their personal representative in Niue or lawyer.

Otherwise, a Judge may make an order directing the manner of service by other means or dispense with service all together.

Documents issued for service are:

- court decisions
- orders
- affidavits
- court minutes
- directions
- response to judicial directions
- submissions from parties
- memorandum from parties
- letter of objection from any party
- letter of withdrawal of objection
- caveat
- injunction application
- application for rehearing

- notice of appeal
- application for rehearing
- notice of rehearing.

14.4 Service by post

Service by post is affected by registered mail. It is deemed to have been received when delivery would ordinarily be expected to have been delivered if the registered mail is not returned unclaimed.

Record the date of post of the document and note the application check list.

14.5 Personal service

Where personal service is to be affected, prepare/attach the statement of service, both public copy and court copy. Ensure the statement lists all the documents attached to be served.

When service is affected ensure the court copy is completed with the details of service.

If service is acknowledged, the party will sign both copies of the statement of service and retain the public copy of the statement of service. They should also keep all the attached documents.

If the person being served takes possession of the documents and refuses to sign the statement, take a note to that effect on the statement. Still leave the attached documents in their possession. Return the completed court copy and put it onto the file promptly.

Note the application check list that service has been affected, record the statement of service in CTS and place the statement on file under the correspondence tab divider.

If service cannot be affected, make enquiries with the other parties to the proceedings or refer the matter to the judge for further direction.