Template 4: Blank Form 46 Affidavit to support Application for Enforcement Hearing

**MAGISTRATES COURT OF QUEENSLAND**

|  |  |
| --- | --- |
| REGISTRY: [INSERT] |  |
| NUMBER: [INSERT] |  |

|  |  |
| --- | --- |
| Applicant/Enforcement Creditor: | [Insert your name] |
|  | AND |
| Respondent/Enforcement Debtor: | [Insert Debtor’s name] |

**AFFIDAVIT**

[Your name] of [Your address], [Your profession] states on oath [or: solemnly and sincerely affirms and declares]:

1. I am the applicant and Enforcement Creditor in this matter.
2. [*Set out the rest of the body of the affidavit in numbered paragraphs*]

[*If the Enforcement Debtor does not live or carry-on business in the district of this Court:*]

1. To the best of my knowledge, the Enforcement Debtor does not reside or carry on business within the [*name of Court registry*] Magistrates Court district.
2. It is not practicable to have the enforcement hearing in a district in which the Enforcement Debtor resides or carries on business because [*Give reasons*]*.*
3. In accordance with Rule 811(4) of the *Uniform Civil Procedure Rules 1999* (Qld), I undertake to the Court to pay conduct money to the Enforcement Debtor.

*[****OR:*** *If the Enforcement Debtor does live or carry-on business in the district of this Court:]*

1. To the best of my knowledge, the Enforcement Debtor [resides/carries on business] within the [*name of Court registry*] Magistrates Court district.

***[If the Statement extends over more than one page, at the foot of the first and every other page except the last:]***

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| …………………………………………..Deponent  | …………………………………………..Witness |

***[At the end of the body of the Statement:]***

***[If this Statement is being sworn in accordance with the Oaths Act 1867 requirements before a special witness (either remotely and/or using electronic signature/s) DO NOT USE the contents below. INSTEAD use Form 001A Special Witness Jurat for Uniform Civil Procedure Rules 1999 forms.]***

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| **The contents of this affidavit are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.****I understand that a person who provides a false matter in an affidavit commits an offence.** |

|  |  |
| --- | --- |
| AFFIDAVIT | Name: |
| Filed on Behalf of the Applicant/Enforcement Creditor | Address: |
| Form 46, Version 2, approved on 25 August 2022 |  |
| Uniform Civil Procedure Rules 1999 | Phone No:  |
| Rule 431 | Fax No:  |
|  | Email: |

|  |  |  |
| --- | --- | --- |
| **SWORN / AFFIRMED** by …………………………………….[insert full name of deponent] at……………………………….[insert place where deponent is located]  | )))))))) | ……………………………………. [signature of deponent] …………………………………….[date] |
| **BEFORE ME:**…………………………………….[insert full name of witness] …………………………………….[insert type of witness]1…………………………………….[insert witness’s place of employment]\*2\**delete if not applicable* | )))))))))))) | …………………………………. [signature of witness] ………………………………….[date] |

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit. (*If required: see R. 433(1)].*

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit, but was physically incapable of signing it. *(If required: see R.433(2)].*

*1 Insert the witness’s capacity that makes them eligible to witness the affidavit under s16A Oaths Act 1867. For example, lawyer, justice of the peace, commissioner for declarations*

*2 For example, the name of the law practice for the lawyer, the name of the government department of the government legal officer, the name of the law practice for a justice of the peace who witnesses documents for a law practice, etc*

Example 4: Form 46 Affidavit to support Application for Enforcement Hearing

**MAGISTRATES COURT OF QUEENSLAND**

|  |  |
| --- | --- |
| REGISTRY: Brisbane |  |
| NUMBER: M100/22 |  |
| Applicant/Enforcement Creditor: | **JOHN SMITH** |
|  | AND |
| Respondent/Enforcement Debtor: | **SAM JONES**  |

**AFFIDAVIT**

John Smith of 1 Brisbane Road, Brisbane QLD 4000, Labourer, states on oath:

1. I am the Applicant and Enforcement Creditor in this matter.
2. On 1 January 2022, the Queensland Civil Administrative Tribunal (**QCAT**) made an order that the Enforcement Debtor pay me $10,000 plus interest. **Exhibit JS1** to this affidavit is a copy of the QCAT decision.
3. On 1 March 2022, I registered the QCAT order at the Brisbane Magistrates Court. **Exhibit JS2** to this affidavit is a copy of the Magistrates Court document confirming the QCAT decision was registered.
4. To date, the Enforcement Debtor has not paid any of the money described in the QCAT order, being $10,000 plus interest.
5. On 1 March 2022, I sent a letter of demand to the Enforcement Debtor. **Exhibit JS3** to this affidavit is a copy of the letter.
6. On 16 March 2022, I sent a letter to the Enforcement Debtor giving notice that I require him to complete and return a Form 71 Statement of Financial Position. Exhibit **JS4** to this affidavit is a copy of the letter and the attached blank Form 71 Statement of Financial Position.

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| *John Smith*…………………………………………..Deponent: John Smith  | *Sally Sun*…………………………………………..Witness: Sally Sun |

|  |  |
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| AFFIDAVIT | John Smith |
| Filed on Behalf of the Applicant/Enforcement CreditorForm 46, Version 2 – approved on 25 August 2022 | 1 Brisbane RoadBrisbane 4000 QLD |
| Uniform Civil Procedure Rules 1999 | (07) 3232 0202  |
| Rule 431 | Johnsmith@gmail |

1. To date, I have not received a completed Form 71 Statement of Financial Position from the Enforcement Debtor.
2. To the best of my knowledge, the Enforcement Debtor resides within the Brisbane Magistrates Court district.

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| **The contents of this affidavit are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.****I understand that a person who provides a false matter in an affidavit commits an offence.** |

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| **SWORN** by John Smith…………………………………….[insert full name of deponent] At Brisbane[insert place where deponent is located]  | )))))))) | *John Smith*……………………………………. [signature of deponent] 6 April 2022…………………………………….[date] |
| **BEFORE ME:**Sally Sun…………………………………….[insert full name of witness] Justice of Peace[insert type of witness]1 | ))))))))))) | *Sally Sun*…………………………………. [signature of witness] 6 April 2022………………………………….[date] |