

4.7 Witnessing affidavits

What is an affidavit?

An affidavit is a written statement made and sworn under oath or affirmation and signed by the deponent for use as evidence in court.

The form of the affidavit varies according to the type of oath or affirmation.

Affidavits are used as means of giving evidence in court in lieu of appearing as a witness and giving oral evidence.

Affidavits made on oath

When the deponent is taking an oath on the Bible, the affidavit usually takes this form:

.....
I, [insert deponent's name], of [insert deponent's address], make oath and say that [insert deponent's statement]

[Deponent's signature appears here]

Signed and sworn by the said deponent at [insert name of town or city and suburb where affidavit signed] this [insert date] day of [insert month] 20 [insert year], before me.

Commissioner for Declarations.

Affidavits made on solemn affirmation

When the deponent is making an affirmation, the affidavit usually takes this form:

.....
I, [insert deponent's name], of [insert deponent's address], do solemnly, sincerely and truly affirm and declare that [insert deponent's statement]

[Deponent's signature appears here]

Signed and solemnly, sincerely and truly affirmed and declared by the said deponent at [insert name of town or city and suburb where affidavit signed] this [insert date] day of [insert month] 20 [insert year], before me.

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Why are affidavits needed?

Affidavits are often intended for use as evidence in a court of law. They are usually tendered to the court in lieu of verbal evidence. They must, therefore, be prepared and sworn as if they were evidence being given before a court. (The legislation governing administering oaths and witnessing affidavits is the *Oaths Act 1867*.) Your role is to take the oath or affirmation and witness the deponent's signature.

How do you witness an affidavit?

Follow the general procedure for witnessing signatures as outlined in the general witnessing chapter 4.1.

For an affidavit, however, there are three extra steps you should follow:

1. **Warn the deponent.** A false statement made under oath or affirmation is a crime and the offender is liable to punishment, including imprisonment.
Ensure the deponent understands that swearing an oath or making an affirmation is a solemn matter.
2. **Question the deponent.** Check they understand the nature and contents of the document.
3. **Administer the oath or affirmation.**

In the case of a **Christian oath**, you ask the deponent to take the Bible in either of their hands and then ask:

.....
Do you swear that the contents of this affidavit are true and correct, so help you God?
.....

Then instruct the deponent to answer:

.....
I swear that the contents of the affidavit are true and correct, so help me God.

Or:

So help me God.
.....

(The forms of non-Christian oaths are given in chapter 4.6)

In the case of an **affirmation**, you ask the deponent:

.....
Do you solemnly, sincerely and truly affirm and declare that the contents of the affidavit are true and correct?
.....

Then instruct the deponent to answer:

.....
I solemnly, sincerely and truly affirm and declare that the contents of the affidavit are true and correct.

Or:

I do.
.....

When you have administered the oath or the affirmation, ask the deponent to sign the form. You should then immediately witness the signature in the normal manner.

Things to bear in mind

Here is a summary of the changes you will need to make to the wording of the form if the document is to be affirmed rather than sworn:

For oath	For affirmation, replace with
Make oath and say	Solemnly, sincerely and truly affirm and declare
Signed and sworn	Signed and solemnly, sincerely and truly affirmed and declared
Sworn herein	Affirmed herein

(Note: For non-Christian oaths, the wording ‘make oath’ and ‘signed and sworn’ remains the same.)

Frequently asked questions

What if I administer the oath/affirmation at the start?

You will need to make a slight alteration to the standard oath or affirmation if you decide to administer it at the start. After the phrase ‘the contents of this document’, include the following words: ‘...and any further information I may supply either orally or in writing...’.

The standard written oath on the bottom of the document need not be altered.

What if the document has more than one page?

If the affidavit is a multiple-page document, you and the signatory should sign each page. Number each page ‘page 1 of 4’, ‘page 2 of 4’ and so on. Although the position of this numbering is not prescribed, it is normally done on the lower right-hand corner. The final page must be witnessed in the normal manner.

What if alterations or additions are made to the document?

As with all documents, any alterations or additions made to the document should be initialled by both you and the deponent. Any additional writings or documents referred to in the original document should be annexed to the original document and endorsed with the appropriate annexure endorsement.

Annexures are documents attached to the main document. They contain information referred to in the affidavit. Examples of annexures are financial statements, medical records, reports, photographs or other relevant copies of documents. Each document must be introduced and described in the body of the affidavit. Annexures are normally marked with the letters ‘A’, ‘B’, ‘C’ and so on, but other references are acceptable.

What if there is more than one affidavit to be witnessed?

You can administer an oath or affirmation simultaneously. Place the affidavits together and amend the oath or affirmation to:

In the case of a **Christian oath**, you ask the deponent to take the Bible in either of their hands and then ask:

.....

Do you swear that the contents of these, your affidavits, are true and correct, so help you God?

.....

In the case of an **affirmation**, you ask the deponent:

.....

Do you solemnly, sincerely and truly affirm and declare that the contents of these, your affidavits, are true and correct?

.....

How do I deal with annexures and certificates of exhibits?

A 'certificate of exhibit' may accompany annexures attached to affidavits for some court proceedings.

Annexure

If the annexure does not have a certificate of exhibit attached, you may mark the annexure with the following wording. Normally, there is no need for the deponent to sign or initial these annexures.

.....
This page and pages to are the particulars marked "....." referred to in the affidavit of

.....

Sworn/Affirmed before me at this day of 20

.....
Deponent

.....
Commissioner for Declarations

Certificates of exhibit

Under the *Uniform Civil Procedures Rules 1999*, a document to be used with and mentioned in an affidavit is an exhibit. An exhibit to an affidavit must have a letter or other identifying mark on it, and the certificate in the approved form on it or bound with it. This Act requires that both you and the deponent must sign the certificate of exhibit as well as all of the annexures.

Should I keep a record of the affidavits I witness?

You can include information in your logbook such as:

- date
- document witnessed
- deponent's details
- type of identification sighted
- location of signing
- any other relevant details.

Where can I get more information?

Queensland Courts

www.courts.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Legal Aid Queensland

www.legalaid.qld.gov.au

Forms

Affidavit

www.courts.qld.gov.au/forms

You will find the Affidavit form in the 'General' section

Sample form

Affidavit sample (page 1 of 1)

Affidavit

I, Insert full name, of Insert address,

make oath and say / solemnly, sincerely and truly affirm and declare that

1.

SAMPLE

Signature of the deponent

.....

Signed and sworn / solemnly, sincerely and truly affirmed and declared by the said deponent

at Town or suburb this _____ day of _____ 20____,

before me.

Insert your seal of office or your prescribed
mark of office and insert your registration
number beside or below your signature

Justice of the Peace (Qualified)/Commissioner for Declarations.

Cross out whichever does not apply to indicate if the document was sworn or affirmed

Cross out whichever does not apply to indicate if the document was sworn or affirmed

Sample form

Affidavit—Uniform Civil Procedures Rules 1999 (page 1 of 1)

SUPREME/DISTRICT/MAGISTRATES COURT OF QUEENSLAND

REGISTRY:
NUMBER:

Plaintiff: _____

AND

First Defendant: _____

AND

Second Defendant: _____

AFFIDAVIT

Full name of the deponent _____ of _____ Address of the deponent _____ states on oath/ solemnly and sincerely affirms and declares:

1. Insert matters to be sworn or affirmed in numbered paragraphs

2. _____

Page 1

Signed: _____ Signature of the deponent Taken by: _____ Person taking the affidavit to sign

Full name of the deponent _____

Sworn [or: Affirmed] by _____ on Insert date at Town or suburb in the presence of:

Signed: _____ Signature of the deponent

Deponent

Insert your seal of office or your prescribed mark of office and insert your registration number beside or below your signature

Justice of the Peace/Commissioner for Declarations

AFFIDAVIT
Filed on Behalf of the (party)
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Name:
Address:
Phone No:
Fax No:

Cross out whichever does not apply to indicate if the document was sworn or affirmed

If the affidavit extends over more than one page this information must be included at the foot of the first and every other page except the last

Cross out whichever does not apply to indicate if the document was sworn or affirmed

Court jurisdiction where the affidavit will be filed

Court registry and court file number

Footer at the end of each page

Jurat: the certification at the end of an affidavit that stipulates where, and when the affidavit was sworn or affirmed, and by whom

Quick guide

Follow these steps to witness an affidavit

-
- ① Check what type of document it is. Don't witness the document if:
 - a. You don't believe it's lawful.
 - b. You don't have authority to do so.
-
- ② Check if the document has special requirements e.g. proof of identity, personal knowledge of the signatory.
-
- ③ Confirm the document is properly formatted e.g. signing by oath or affirmation, or as a statutory declaration.
-
- ④ Check the signatory is the person named in the document.
-
- ⑤ Ask for proof of identity.
-
- ⑥ Confirm the date throughout the document is the same as the date on which you're witnessing.
-
- Read through the document for alterations, spaces or omissions.
- ⑦
 - a. Both you and the signatory should initial any changes, including correction fluid or tape.
 - b. Decline to witness material you know to be false.
 - c. Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.
-
- If the affidavit has multiple pages:
- ⑧
 - a. Number each 'page 1 of 6', 'page 2 of 6' and so on.
 - b. You and the signatory should sign each page.
-
- If the affidavit has annexures:
- ⑨
 - a. Ensure each is referenced in the main affidavit.
 - b. Mark with appropriate wording as an annexure or certificate of exhibit, as needed.
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- If the affidavit has a certificate of exhibit and annexures:
- ⑩
 - a. Ensure each is referenced in the main affidavit.
 - b. Mark with appropriate wording as an annexure or certificate of exhibit, as needed.
 - c. Ask the deponent to sign all certificates and annexures.
-

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- ⑪ Warn the deponent that a false statement under oath or affirmation is a crime.
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- ⑫ Ask open-ended questions to ensure the deponent understands the nature and contents of the document.
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- ⑬ Administer the oath or affirmation.
a. If there is more than one affidavit, all can be sworn or affirmed together.
-
- ⑭ If necessary, amend the wording of the form depending on whether an oath or affirmation was taken.
-
- ⑮ Sign the document and insert your registration number wherever a signature is required.
a. If the signatory has asked you to not check the document, state this in writing before signing.
-
- ⑯ Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).
-
- ⑰ Enter all relevant details in your logbook.
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