

Sample 8: Form 46 – Affidavit

MAGISTRATES COURT OF QUEENSLAND

REGISTRY:
NUMBER:

Plaintiff¹: *Louis James Ferris and Jeanine Elizabeth Ferris*

AND

[First]Defendant²: *ASD Credit Services, CAN 65789033*

AND

[Second Defendant:] *(Insert Name)*

AFFIDAVIT

I, Louis James Ferris, of 25 Banksia Ave, Trondheim, in the State of Queensland, builder's labourer, states on oath [or: solemnly and sincerely affirms and declares]:

1. We are the applicants in these proceedings.
2. We entered into a loan contract with the respondent (as co-borrowers) on 12 November 2014. Exhibit A is a true copy of the loan contract.
3. On 3 June 2018 we received a default notice dated 28 May 2018 under the National Credit Code. Exhibit B is a copy of the default notice.
4. On 3 June 2018 we attempted to negotiate a postponement of enforcement proceedings. Exhibit C is a copy of the letter from the respondent dated 10 June 2018 confirming the terms of the negotiated postponement.
5. The amount of the original loan was \$40,000 and the current balance payable is \$33,500. The loan is for six years and the monthly payments are \$500.

If the affidavit extends over more than one page, at the foot of the first and every other page except the last:

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Signed: *Louis Ferris*

Taken by: *(person taking the affidavit to sign)*

AFFIDAVIT
Filed on Behalf of the (party)

Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Name: Louis Ferris
Address: 25 Banksia Ave,
Trondheim Qld 4234

Phone No: 3182 5182
Fax No: N/A
Email:
lferris@mymail.com.au

Sample 8: Form 46 – Affidavit cont'd

6. We made all loan payments on time since the loan was drawn down until last month, with the exception of one payment which was made seven days late in June 2017.
7. The reason for late payment in 2017 was that we were on vacation and forgot to arrange for sufficient funds to be placed in our savings account in time for the loan payment direct debit. As soon as we had noticed our error, we rang the respondent's office and explained our mistake to the operator.
8. Last month we were unable to pay the full payment. We are now in arrears \$700 which is \$200 from last month and \$500 this month.
9. The reason we cannot pay our loan right now is that we are experiencing temporary financial hardship. I have had an overtime ban at my workplace and my wife Jeanine Ferris recently reduced her hours of work to care for her sick mother.
10. I am a permanent part-time builder's labourer employed by Ross and Co Builders, Samsonvale. Overtime usually accounts for an extra \$400 per fortnight in my income. I expect to resume working overtime in the first week of July 2018 after the overtime ban is lifted on 1 July 2018.
11. Jeanine Ferris is employed as a teacher's aide at Mt Jackson Primary School for 30 hours per week on a regular casual basis. Over the last two months, Jeanine has reduced her hours to 10 hours per week to care for her mother. Her mother died on 15 May 2018. Jeanine has now resumed her usual hours of employment.
12. On 6 June 2018, we wrote to the respondent explaining our temporary hardship and asked to reduce our payments to \$300 for three months until August 2018. Then we will increase them to \$650 per month until we pay back all the arrears. Exhibit D is a true and correct copy of the letter. To date we have not received a reply although we have received the default notice (exhibit B) since we sent our letter.
13. We confirm that the facts and circumstances described in Exhibit D are true and correct.
14. We confirm that we are now asking this Honourable Court for orders to vary the loan by postponing the monthly payments for June, July and August and correspondingly extending the term of the loan.

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Signed: *Louis Ferris*

Taken by: *(person taking the affidavit to sign)*

AFFIDAVIT
Filed on Behalf of the (party)

Form 46, Version 1
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Name: Louis Ferris
Address: 25 Banksia Ave,
Treedale Qld 4234

Phone No: 3182 5182
Fax No: N/A
Email:
lferris@mymail.com.au

Sample 8: Form 46 – Affidavit cont'd

15. We reasonably expect to be able to pay the net balance due under the contract if the terms of the loan contract are varied as we have requested.
16. All the facts and circumstances herein deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this Affidavit.

Sworn [or: Affirmed] by *Louis Ferris* on 18 June 2018 at 35 Tank Street, Brisbane, Qld, in the presence of:

Signed: *Louis Ferris*

Douglas Kennedy JP

Deponent

(Commissioner for Declarations/Solicitor JP)

[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 For proceedings commenced by Originating Application for "Plaintiff" substitute "Applicant"

² For proceedings commenced by Originating Application for "Defendant" substitute "Respondent"