



Information Fact Sheet 2

Witnessing Affidavits

AFFIDAVITS – WHAT IS AN AFFIDAVIT?

Various statutes require an oath or affirmation by a deponent in the form of an affidavit. An affidavit is a written statement, sworn or affirmed before an authorised witness. Affidavits are evidence on oath and may be tendered as evidence in court proceedings.

Unless another written law provides otherwise, an affidavit for any purpose in Western Australia must be made in accordance with the *Oaths, Affidavits and Statutory Declarations Act 2005*. (OASD Act) [section 9 (1)]

AFFIDAVITS – HOW ARE THEY MADE?

- The affidavit must conclude with a statement (known as the “Jurat”) that says: [section 9 (2)]
 - a. it is sworn or affirmed, as the case requires, by the person making it in the presence of an authorised witness; and
 - b. where and when it is sworn or affirmed.

- The person who is making the affidavit must: [section 9 (3)]
 - a. sign or personally mark the jurat and each other page of the affidavit;
 - b. sign or initial any alteration, such as an insertion or erasure, that has been made to the affidavit; and
 - c. in the presence of an authorised witness, say orally on oath or orally affirm:
 - i. that he or she is the person named as the maker of the affidavit;
 - ii. that the contents of the affidavit are true;
 - iii. that the signature or mark is his or hers; and
 - iv. if necessary, that any attachment to the affidavit is the attachment referred to in it.

- The person making the affidavit can sign the jurat, each page of the affidavit or initial alterations made to the affidavit; in the absence of the authorised witness. [section 9 (4)]

WITNESSING THE AFFIDAVIT

After the person making the affidavit has:

[section 9 (5)]

- a. signed the jurat, each page of the affidavit and initialled any alterations;
- b. sworn/affirmed that he/she is the maker of the affidavit (referring to any attachments).

the authorised witness must:

[section 9 (5)(a-c)]

- a. under or near the jurat sign or personally mark the affidavit;
- b. imprint or clearly write his/her name and qualification as an authorised witness (if the authorised witness is a JP, the JP's registration number should also be included); and
- c. sign each page of the affidavit, initialling any alterations next to the initial of the maker.

WHO CAN WITNESS AN AFFIDAVIT?

An authorised witness for an affidavit that is made at a place within Western Australia is a:

[section 9 (6)]

- a. Justice of the Peace;
- b. An experienced legal practitioner, who has not been involved in the preparation of the affidavit;
- c. Public Notary; and
- d. Any registrar or clerk of a court, mining registrar under the Mining Act 1978.

Outside of Western Australia, an affidavit may be sworn by a judge of a court, a magistrate or justice of the peace of or for that place.

[section 9 (7)]

HOW TO ADMINISTER AN OATH / AFFIRMATION

An affidavit must be sworn or affirmed by a person making the affidavit in the presence of an authorised person.

[section 7 (1)]

The person taking the oath should hold up one hand and say aloud as follows:

[section 7 (1)]

An oath in an affidavit:

"I swear by Almighty God that this is my name and my signature and the contents of this my affidavit is true."

An oath in an affidavit with attachments:

"I swear by Almighty God that this is my name and my signature and that these are the exhibits or annexure referred to in my Affidavit and the contents of this my affidavit is true."

An affirmation:

"I sincerely declare and affirm that this is my name and my signature and the contents of this my affidavit is true."

An affirmation with attachments:

"I sincerely declare and affirm that this is my name and my signature and that these are the exhibits or annexure referred to in my affidavit and the contents of this my affidavit is true."

AFFIDAVITS BY BLIND OR ILLITERATE PEOPLE

If the person making an affidavit is blind or illiterate, the authorised witness for the document must: [section 13]

- a. read the document aloud to the person, or cause the document to be read aloud to the person in the authorised witness's presence;
- b. satisfy himself or herself that the person understood what was read aloud; and
- c. certify on the document that
 - the document was read aloud to the person; and
 - that the authorised witness is satisfied that the person understood what was read aloud.

AFFIDAVITS BY PEOPLE NOT CONVERSANT WITH ENGLISH

If the person making an affidavit is not sufficiently conversant with English to be able to make the affidavit in English, the person may make the affidavit in another language but the affidavit is not admissible in a court or by a person acting judicially unless: [section 14]

- a. the affidavit is translated into written English by a suitably qualified translator; and
- b. the translator makes an affidavit that:
 - sets out his or her qualifications as a translator;
 - says the English translation is accurate; and
 - has the English translation attached to it.

RUBBER SIGNATURE STAMPS MUST NOT BE USED

A person who is the maker of, or the witness to, an affidavit must not use a rubber or other stamp to make the *person's signature* or *personal mark*. [section 15]

Affidavits that are signed using a rubber facsimile signature is not admissible in a court.

For more information on this Fact Sheet, please refer to the Justice of the Peace Handbook available on www.dotag.wa.gov.au

Alternatively, you may contact:

Justices of the Peace Branch
GPO Box F317
PERTH WA 6841
Phone: 9425 2827
Email: jps@justice.wa.gov.au

“Example Affidavit”

IN THE SUPREME COURT OF
WESTERN AUSTRALIA

Application no. 937/10

PROBATE DIVISION

In the Estate of **Elizabeth Mary Citizen**

Late of Unit 1, 153 Karridale Road, Perth WA 6330 formerly of 56 Gun Barrell Road,
Shell Harbour, Perth in the State of Western Australia, Cook, deceased.

**Affidavit of Joe Farmer
sworn the 22nd Day of October 2003**

Date of document 21 October 2010

Date of filing

<u>Index</u>	<u>Page</u>
Affidavit of Joe Farmer	1
Annexure - Exhibit “A”	2

Customer Service

SC JF
SC JF

I JOE FARMER of 17 Fowler Drive, Perth in the State of Western Australia ~~Senior~~
~~Court~~ Officer, make oath and say as follows:

1. I refer to paragraph 5 of my Affidavit sworn 7 November 2010 where I stated that I was appointed executor of my mother’s will. My Uncle RONALD ARTHUR CITIZEN was named as executor and I was named as substitute executor.
2. My Uncle died on the 7th July 2010. Annexed hereto and marked with the letter “A” is a certified copy of his death certificate.

JP's & Deponent's initials in lefthand margin adjacent to each correction

Sworn by the deponent at Perth in the State of Western Australia this 22nd day of November 2010
Before me

Joe Farmer

Deponent's Signature

Sarah Citizen JP

Sarah Citizen
Justice of the Peace
WA Registration Number 36854

JP's Signature

JP's full name and registration number.
(or stamp showing these details)