

Creditor's petition

No. _____ of 20____

Federal Court of Australia
District Registry: [State]
Division: General

In the matter of [name of debtor or bankrupt estate]

[Name of Applicant(s)]

Applicant[s]

[Name of Respondent(s)]

Respondent[s]

To the Respondent
of [address]

Hearing of this petition

This petition has been set down for hearing by the Court at the time, date and place shown in the Notice of Filing and Hearing attached.[Note: The Court will insert the Notice of Filing and Hearing as a coversheet when this petition is accepted for filing.] If you or your lawyer do not attend, then the Court may deal with the petition in your absence and make a sequestration order making you bankrupt.

You must file and serve a notice of appearance (Form B4) in the Registry before attending Court or taking any other steps in the proceeding.

Opposing this petition

If you wish to oppose this petition, you must:

- (a) file a notice of appearance (Form B4);
- (b) file a notice stating grounds of opposition to the petition (Form B5) and an accompanying affidavit supporting the grounds;

Filed on behalf of (name & role of party)
Prepared by (name of person/lawyer) _____
Law firm (if applicable) _____
Tel _____ Fax _____
Email _____
Address for service
(include state and postcode) _____

- (c) serve a copy of each document on the applicant creditor at the address for service stated below not less than 3 days before the date for the hearing of this petition stated on the attached coversheet (Notice of Filing and Hearing); and
- (d) attend at the Court on the date for the hearing.

The Petition

The applicant creditor [name and address of applicant creditor] applies to the Court for a sequestration order under section 43 of the *Bankruptcy Act 1966* against the estate of [name, address and occupation of respondent debtor].

1. The respondent debtor owes the applicant creditor the amount of [\$ amount] for [statement of reason for, and details of, the debt, including details of any judgment debt].
2. [*Either]The applicant creditor does not hold security over the property of the respondent debtor.

[*or]

The applicant creditor holds security over the property of the respondent debtor to the value of [\$ amount] and consisting of [statement of particulars of security], and:

- [*]is willing to surrender this security for the benefit of creditors generally if a sequestration order is made against the respondent debtor;
- [*or]the value of the property is [\$ amount], which leaves an unsecured debt of [\$ amount].

[Note If there is more than 1 applicant creditor, the form may be appropriately amended.]

3. At the time when the act of bankruptcy was committed, the respondent debtor: [Select one or more as appropriate and delete the others]
 - [*]was personally present in Australia;
 - [*]was ordinarily resident in Australia;
 - [*]had a dwelling house or place of business in Australia;
 - [*]was carrying on business in Australia either personally or by an agent or manager;
 - [*]was a member of a firm or partnership carrying on business in Australia by means of partners or agent or manager.
4. The following act of bankruptcy was committed by the respondent debtor within 6 months before presentation of this petition:

[Include the following paragraph if the act of bankruptcy is failure to comply with a bankruptcy notice]

The respondent debtor failed to comply on or before [date of act of bankruptcy] with the requirements of a bankruptcy notice served on [*]him[*or]her on [date of service of bankruptcy notice] or to satisfy the Court that [*]he[*or]she had a counter-claim, set-off or cross demand equal to or more than the sum claimed in the bankruptcy notice, being a counter-claim, set-off or cross demand that [*]he[*or]she could not have set up in the action in which the judgment referred to in the bankruptcy notice was obtained.

[If the act of bankruptcy is an act of bankruptcy mentioned in section 40 of the Bankruptcy Act 1966 (other than a failure to comply with a bankruptcy notice), give full details of the act of bankruptcy including details of any judgment.]

[*Note Completion of paragraph 5 is optional. Please insert details, if known; or "unknown" or "inapplicable" as appropriate]

5. The applicant creditor provides the following information, to the extent it is known to the applicant creditor, for use by the Australian Financial Security Authority:
- any alias used by the respondent debtor:
 - the date of birth of the respondent debtor:
 - the business name of the respondent debtor:
 - the business address of the respondent debtor:

Date: [eg 19 June 20..]

Signed by [Name]
 [Insert capacity: Applicant / Lawyer for the Applicant]

Applicant creditor's address for service

The Applicant creditor's address for service is:

Place:

Email:

Affidavit verifying creditor’s petition

On [date], I, [name, address and occupation of deponent], [*either]say on oath [*or]affirm:

1. [*]I am the applicant.[*or]I am a director of the applicant[*or]I am a [occupation] of the applicant and, as such, have access to the books and records of the applicant and am authorised to make this affidavit on the applicant’s behalf].
2. The statements made in paragraphs 1, 2 and 3 of the creditor’s petition are within my own knowledge true.
3. In respect of the statements made in paragraph 4 of the creditor’s petition, I say the respondent failed, within 21 days after service of the bankruptcy notice, to pay the debt or make an arrangement to [*]my[*or]the applicant’s satisfaction for payment of the debt.

Sworn / Affirmed by the deponent at [place] in [State or Territory] on [date] Before me:)))))	Signature of deponent
--	-----------------------	-----------------------

Signature of witness

[Name and qualification of witness]

Notes

1. If necessary, this affidavit, and any other affidavit verifying the petition, may be filed as a separate document in accordance with Form 59 of the *Federal Court Rules 2011* with the heading in Form B1. If this affidavit is filed as a separate document, a copy of the petition must be attached to it.
2. If the petition is founded on an act of bankruptcy mentioned in paragraph 40(1)(d) of the *Bankruptcy Act 1966*, the information required by rule 4.03 may be included in this affidavit (or, if an affidavit of the kind mentioned in Note 1 is filed, in that affidavit).
3. If the petition is founded on an act of bankruptcy mentioned in paragraph 40(1)(g) of the *Bankruptcy Act 1966*, the information required by rule 4.04 may be included in this affidavit (or, if an affidavit of the kind mentioned in Note 1 is filed, in that affidavit).
4. A creditor must give a copy of this petition to the Official Receiver within 2 working days after presentation. (see subregulation 4.05 (1) of the Bankruptcy Regulations)

[*delete if inapplicable]