



FEDERAL MAGISTRATES COURT OF AUSTRALIA

HOW TO OPPOSE A BANKRUPTCY APPLICATION OR CREDITORS PETITION

A person who has been served with a bankruptcy application or creditor's petition under the *Bankruptcy Act 1966* may oppose the application or petition. Rules 2.05 & 2.06 of the *Federal Magistrates Court (Bankruptcy) Rules 2005* (the Rules) set out the requirements.

Documents to be filed

In order to oppose a bankruptcy application or creditor's petition the respondent must file the following documents:

1. Appearance (Form 4)
2. Notice stating grounds of opposition to application or petition (Form 5)

The person seeking to oppose the application or petition is the *respondent* and the creditor is the *applicant*. The names of the applicant and respondent are to be stated in the heading of the Form 4 Appearance, Form 5 Notice of Opposition and any other documents filed by the respondent. The respondent should also insert at the bottom of the first page his/her details as the person opposing the application or petition. The respondent must state briefly the grounds on which he/she is opposing the application or petition. There may be more than one ground. If so, each ground needs to be stated separately.

The respondent must provide an address for service at which documents in these proceedings can be left during normal business hours or may be posted and a telephone and facsimile number. The form must be dated and signed. It does not need to be witnessed.

3. An affidavit by the Respondent.

An affidavit is a written form of evidence either sworn or affirmed before a solicitor, Justice of the Peace, Commissioner for Declarations or other authorised person. The respondent's affidavit must detail all the relevant facts that the respondent relies on to support the Notice of Opposition.

Lodging the Documents for filing

The Form 4 Appearance, Form 5 Notice of Opposition and the affidavit should be copied (one for the Court and one for each party to the action) and all copies lodged at the Registry. A Registrar will check that the documents are in the correct form before they will be accepted for filing.

If the documents are in order, they will be filed and processed. There is no filing fee for this.

What happens next?

When you file your Form 4 Appearance, Form 5 Notice of Opposition and other documents, the Registry will return sealed copies of them to you so you can arrange service on the applicant.

Service of the documents

Rule 2.06 provides that the respondent must serve the Appearance, Notice of Opposition and supporting affidavit on each applicant to the application or petition at least 3 business days before the date fixed for hearing of the application or petition.

The documents should be delivered personally to the applicant or posted to applicant's address for service, which is stated on either the application or petition.

Hearing

The respondent should attend Court at the hearing of the application or petition. The hearing date can be found by looking at the hearing date endorsed on the application or petition. If there is no attendance by the respondent, orders that might be adverse to the interest of the respondent may be made in the person's absence.

Documents attached:

- Appearance (Form 4)
- Notice stating grounds of opposition to application or petition (Form 5)
- Affidavit

Registry address for the Federal Magistrates Court of Australia in Queensland for federal law matters

Level 6
Harry Gibbs Commonwealth Law Courts
119 North Quay
BRISBANE QLD 4000
Phone: 07 32481100
Website: www.fmc.gov.au

PO Box 13084
George Street Post Shop
QLD 4003
Fax: 07 3248 1260