

## **ADULT CONSERVATORSHIPS AND GUARDIANSHIPS**

\*Unless otherwise noted, all forms may be obtained at [www.sccourts.org/forms](http://www.sccourts.org/forms).  
You should consult an attorney for advice.

### **OVERVIEW OF ADULT CONSERVATORSHIP.**

A *conservator* is a person appointed to manage the estate of an incapacitated adult. To file for a conservatorship in Colleton County, the alleged incapacitated individual (A.I.I.) must reside in this county or own property or have the right to take legal action in this county.

### **OVERVIEW OF ADULT GUARDIANSHIP**

A *guardian* is a person appointed to make decisions regarding the health, education, maintenance, and support of an incapacitated adult (a "ward"). To have a guardian appointed by this Court, the incapacitated adult must reside or be present in Colleton County.

### **PETITION (FORM 520GC\*).**

A summons and a petition (520GC) must be completed and filed with the court to begin the process of appointing a conservator (or the issuance of some other protective order) and a guardian. There is a filing fee of \$150.00 unless the petitioner is determined to be indigent. Additional fees may be assessed after the filing of an Inventory and Appraisal (typically paid from conservatorship assets).

### **CRIMINAL BACKGROUND CHECK & CREDIT REPORT.**

The proposed conservator/guardian must file both a credit report (with credit score) and a criminal background check from the state where he/she is a resident. Once received, the court will review these documents and note any questionable items, such as unpaid bills or arrests. Information about obtaining the reports is included in this packet.

### **SERVICE OF SUMMONS AND PETITION.**

As soon as reasonably possible but no later than 120 days from filing, petitioner must serve\*\*:

A. a copy of the summons, petition, and notice of right to counsel (Form 524GC) upon the A.I.I.; and

B. a copy of the summons and petition upon all co-respondents (e.g., other close relatives, anyone named as a power of attorney for the A.I.I.).

**\*\*Service is to be made in accordance with Rule 4 of the South Carolina Rules of Civil Procedure. Proof of service must be filed with the court. The service can be in the form of personal delivery (with affidavit of service from process server or law enforcement), certified mail green cards signed by the respondent (you must select restricted delivery with return receipt), commercial delivery service (UPS, FedEx), or signed acceptance of service (Form 549GC, not available for A.I.I.). Ordinary first class mail is not sufficient for service. You must file proof of service within ten days of the service.**

If proof of service is not filed within 120 days of the filing of your petition, the Court may dismiss your petition.

### **RENUNCIATION/NOMINATION.**

Often more than one family member has legal priority to serve as the conservator or guardian of an incapacitated adult<sup>1</sup>. In these instances, family members may renounce their right to serve and nominate the person they believe to be the best candidate for guardian. These individuals must execute a Renunciation/Nomination (Form 549GC). If family members do not wish to renounce their right to serve and object to the appointment of the petitioner as conservator or guardian, they should consult an attorney. If someone other than the petitioner wishes to serve as conservator or guardian, he or she must file a separate summons and petition and serve it on all parties.

### **COURT APPOINTMENTS OF GAL, COUNSEL, EXAMINER.**

Once the Court receives the proof of service for the A.I.I.:

A. After 15 days, the Court will appoint an attorney to represent the A.I.I. (if none has been retained);

B. No later than 30 days from the filing of proof of service on the A.I.I., the Court will appoint: (1) a guardian ad litem (GAL) for the A.I.I.; and (2) one examiner, who must be a physician.

The GAL and examiner are both required to file written reports with the Court prior to a hearing.

### **WAIVERS (515GC).**

After service of the summons and petition upon all interested parties, each respondent has thirty (30) days to file an Answer. If that individual has no objections to the summons or petition, he/she can execute a waiver (Form 515GC). This form is used to waive any rights to notice of court proceedings.

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<sup>1</sup> See S.C. Code §62-5-408.

## **NOTICE OF HEARING & HEARING.**

Once all of the above documents are received, a hearing may be scheduled. Unless waived, a twenty (20) day notice of the hearing must be served upon all interested parties. The right to receive notice twenty (20) days prior to the hearing can also be waived by completing Form 515GC. The hearing will provide the petitioner with the opportunity to present evidence on why a conservator or guardian is necessary, and who is the best individual to serve in those roles. This is also an opportunity for opposing evidence to be presented. After all evidence has been heard, the judge will rule in the matter.

## **BOND/RESTRICTED ACCOUNT.**

Before the appointment of a conservator can be completed, a surety bond must be filed. If the proposed conservator is not bondable, that person may not be appointed by the Court. The bond must be in the amount of the total value of the incapacitated adult's personal assets (not real property) plus one year's estimated income. In addition, the Court may require that conservatorship funds be placed in a restricted account, from which no funds may be withdrawn without a court order.

## **EMERGENCY OR TEMPORARY RELIEF.**

Sometimes it may be necessary that the court issue an emergency or temporary order prior to the full hearing on the conservatorship.

A. *Emergency Relief:* An emergency means that immediate and irreparable injury or damage to the health, safety, or welfare of an alleged incapacitated individual (A.I.I.), or substantial economic loss to the A.I.I., is likely and imminent before a temporary or permanent hearing may be scheduled. (See Form 512GC, which has instructions attached). If the Court issues an emergency order without a hearing, a review hearing is required within 10 days.

B. *Temporary Relief:* Prior to a temporary order, the Court will require notice be given to all respondents at least 10 days prior to a hearing. (See Form 513GC, which has instructions attached).

## **POSSESSION OF FIREARMS BY INCAPACITATED INDIVIDUALS.**

Probate Courts are required to report to the South Carolina Law Enforcement Division (SLED) the names of persons for whom a conservator or guardian has been appointed, and they are not allowed to ship, transport, possess, or receive a firearm or ammunition. For more information, see S.C. Code Ann. §§23-31-1010 et seq.

## **COSTS AND EXPENSES OF FILING.**

Pursuant to S.C. Code Ann. §62-5-105, the Court may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the

assets of the protected person who is the subject of a formal proceeding. If not otherwise compensated for services rendered, the court-appointed guardian ad litem, counsel for the A.I.I., and examiner are entitled to reasonable compensation, as determined by the court. If the court does not order otherwise, petitioners are responsible for their own attorney's fees and costs, as well as the other costs and expenses of the action.

REASONS **NOT** TO FILE A PETITION  
FOR AN ADULT CONSERVATORSHIP  
IN THE COLLETON COUNTY PROBATE COURT

1. The adult does not reside in Colleton County.
2. The adult does not own property in Colleton County nor does he/she have a right take legal action in Colleton County.
3. The adult is not incapacitated as defined by statute [§62-5-101].
4. A physician will not certify that the adult is incapacitated by affidavit.
5. The adult's only cash asset is a monthly Social Security check. (Payee changes can be made by contacting the local Social security Administration office.)
6. A Durable Power of Attorney is on file in the Register of Deeds Office (or exists in recordable form) and is adequate to meet the individual's needs.
7. The adult's only asset, other than monthly Social Security checks, is real property; and no changes are proposed for the property at this time.
8. All cash assets are held in joint accounts.
9. Monies are being held in established trust for the adult.
10. Less restrictive alternatives are available to assist the adult.

# CONSERVATORSHIP FILINGS POST-APPOINTMENT

## 1. **INVENTORY AND APPRAISEMENT**

Within thirty (30) days of the court appointment of a conservator, the conservator must file an Inventory and Appraisal (550GC), showing all assets of the protected person and the fair market value.

## 2. **FINANCIAL PLAN**

The Court may require that the conservator file a Financial Plan (566GC), telling the Court how the conservator plans to manage the affairs of the protected person. This form can also be used to set an annual budget for the conservatorship.

## 3. **REPORT OF CONSERVATOR**

Annually, and as otherwise directed by the court, the conservator must file a Conservator Report (567GC), detailing all receipts and disbursements, setting forth the location of assets, and providing information about the continued need for a conservatorship. The court requires the conservator to file documentation for each transaction, including cancelled checks and bank statements. There is a \$10.00 filing fee for all accountings. It is the duty of the conservator to complete the accounting and pay the filing fee.

## 4. **CLOSING**

If the protected adult becomes capable of handling his/her own affairs or dies, the conservator must file an Application for Relief (584GC) and a final report of conservator. The court will review these documents and then proceed in closing the file, if appropriate.

## **Guardianship Frequently Asked Questions**

(Taken in part from the South Carolina Judicial website. For more information, visit <http://www.sccourts.org/selfHelp/index.cfm>)

### **Who may need a guardian?**

- An adult who is unable to make reasoned health care decisions or take or direct proper care of himself or herself.
- An adult who does not have a health care power of attorney (HCPOA) and needs someone to make health care decisions.
- An adult who is dying and does not have a living will or HCPOA and whose family cannot agree as to appropriate end of life decisions.
- An adult who has a living will or HCPOA but the person named in the document is unable or unwilling to make decisions or has a conflict.
- An adult who has a living will or HCPOA but the documents are not sufficient to meet his or her needs or the adult will not let the agent designated help with decisions.
- An adult whose health care providers (nursing home, doctor, hospital) are not honoring a durable power of attorney or HCPOA.
- An adult who needs services in the home and is unable to arrange for them on his or her own.
- An adult who is in a facility and needs an advocate to make sure his or her needs are met.

### **Who does not need a guardian?**

- A person who is a minor (under age 18). Family Court has jurisdiction over minors.
- An adult who is not incapacitated. Making poor decisions does not necessarily mean a person needs a guardian.
- An adult who has a valid living will, healthcare power of attorney, or durable power of attorney that is sufficient to meet his or her needs.
- An adult whose needs are met by the Adult Health Care Consent Act. See S.C. Code Ann. §§ 44-66-10 et seq. at <http://scstatehouse.gov/code/t44c066.php>
- A ward who already has a guardian in another jurisdiction. There may be a need to transfer the guardianship to S.C. if the ward is residing here.
- An adult who can manage personal care decisions but not financial decisions. That person may need a protective order or the appointment of a conservator to manage money or property.

### **You may not be the appropriate person to serve as a guardian if:**

- You do not have time.
- You do not reside in South Carolina.
- You do not have the resources to commit to serve.
- You have been convicted of a felony.
- You are on the adult abuse registry.
- You are on a sexual offender or sexual predator registry in any state.

- You have a physical or mental health concern that would prevent you from serving.
- You are uncomfortable making choices that may conflict with those of other family members.
- You may not be able to honor the ward's wishes.
- You are applying out of guilt or you are not emotionally ready to serve.

### **What are the alternatives to a family member serving?**

- While South Carolina does not have a public guardian program, friends, professional guardians, agencies, or others may be willing to serve.
- You should compare prices and services for professional guardians or agencies.
- You may wish to check with the following agencies for additional information:
  - South Carolina Lieutenant Governor's Office on Aging
  - South Carolina Department of Social Services
  - Veterans Administration
  - South Carolina Department of Mental Health
  - South Carolina Department of Disabilities and Special Needs
  - South Carolina Department of Health and Human Services

### **Can two people be appointed to serve as guardians for the same person?**

Yes, if it is in the best interest of the ward. Whether a judge will appoint more than one guardian is a case-by-case determination.

### **What are some of a guardian's responsibilities?**

- Acting in the ward's best interest;
- Reporting to the Probate Court as instructed;
- Staying informed of the ward's conditions (appointments, services, etc.);
- Visiting the ward regularly based upon the needs of the ward or upon order of the Probate Court;
- Making sure the ward has appropriate food, shelter, clothing, and health care;
- Considering the needs and wants of the ward in making decisions that are in his or her best interest;
- Advocating in the ward's best interest;
- Consenting to or refusing to consent to health care; and
- Making end-of-life decisions.

### **Can someone for whom a guardian is appointed purchase or possess a firearm?**

No. Probate Courts are required to report to the South Carolina Law Enforcement Division (SLED) the names of persons for whom a guardian has been appointed, and they are not allowed to ship, transport, possess, or receive a firearm or ammunition. For more information, see S.C. Code Ann. §§23-31-1010 et seq.



## **GUARDIANSHIP REQUIRED COURT FILINGS POST-APPOINTMENT**

### **1. GUARDIAN REPORT (FORM 534GC).**

The guardian is required to file an Annual Guardian Report (Form 534GC) annually or as otherwise ordered by the court. This report consists of several questions and serves as an update to the court on the health and welfare of the ward.

Any major changes in the ward's status, which occur during the interim of these reports, should be reported to the court as well.

### **2. PLAN OF CARE FOR WARD (FORM 521GC).**

Within thirty (30) days of appointment, the Guardian is required to file the Plan of Care, setting forth the extent to which the ward can develop or recover the ability for independent decision making and proposed steps for development or restoration, if appropriate.

### **3. CLOSING.**

If the incapacitated adult becomes capable of handling his or her own affairs, the guardian must file an Application for Relief (Form 583GC-B) with supporting documentation of the change in status for the ward. If the incapacitated person dies, the guardian must file a certified death certificate and Application for Relief (Form 583GC-B).

If funds are needed for the final disposition of the ward's remains, the guardian may seek authority to expend funds (Form 554GC).

# OBTAINING S.C. LAW ENFORCEMENT DIVISION (SLED) CRIMINAL RECORDS CHECK

## REQUEST METHOD

To obtain a SLED Report, you must submit a request to the South Carolina Law Enforcement Division by using one of the following methods:

Web (preferred):	<a href="http://www.sled.us.gov">www.sled.us.gov</a>
Mail (limited service):	South Carolina Law Enforcement Division P.O. Box 21398 Columbia, SC 29221-1398

## INFORMATION NEEDED

According to South Carolina State Law, the following information is necessary to process a criminal history search for the Colleton County Probate Court:

1. FULL name (including middle initial and suffixes as well as maiden and other names used);
2. Social Security Number (individual must agree to the use of their social security number for name search); and
3. Date of Birth.

## COST

There is a **\$25.00** fee per name, excluding maiden and alias names. If you obtain the criminal records check on-line, you pay by credit card. By mail, the payment must be in the form of a money order, cashier's check or certified check; **personal checks are not accepted.**

**IF THE PETITIONER IS FROM A STATE OTHER THAN SOUTH CAROLINA, HE OR SHE MUST OBTAIN A REPORT FROM THE STATE OF RESIDENCE.**

# HOW TO OBTAIN A CREDIT REPORT

## **REQUEST METHODS**

To receive your credit report, you may submit requests to the following agencies by the using one of the following methods:

### **EXPERIAN (formerly TRW)**

Telephone: 1-888-Experian (1-888-397-3742)

Mail: Experian  
P.O. Box 949  
Allen, TX 75013-0949

Web: [www.experian.com](http://www.experian.com)

### **EQUIFAX**

Telephone: 1-800-997-2493

Mail: Equifax  
P.O. Box 105851  
Atlanta, GA 30348

Web: [www.equifax.com](http://www.equifax.com)

### **TRANS UNION CORP.**

Telephone: 1-800-888-4213

Mail: Trans Union Corp.  
P.O. Box 1000  
Chester, PA 19022

Web: [www.tuc.com](http://www.tuc.com)

### **INFORMATION NEEDED**

1. FULL name (including middle initial and suffixes)
2. Spouse's FULL name (if applicable)
3. Address for the last five years, including current address and phone number
4. Social Security number
5. Date of Birth
6. Name and address of your current employer

**If you are making the request by mail, you must sign the request and provide a copy of a utility bill in your name and your driver's license to allow verification of your current address.**

**Credit report must include credit score.**