

**OPENING ADULT CONSERVATORSHIPS/  
ISSUANCE OF PROTECTIVE ORDERS**

\*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.

1. **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.

2. **PETITION (FORM 540GC\*).**

A summons and a petition (540GC) must be completed and filed with the court to begin the process of appointing a conservator or the issuance of some other protective order. 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).

\*If petitioner is also filing for guardianship, petitioner may utilize the Dual Petition for Guardianship and Conservatorship (Form 520GC).

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

The proposed conservator 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.

4. **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.

## 6. RENUNCIATION/NOMINATION.

Often more than one family member has legal priority to serve as the conservator 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, they should consult an attorney. If someone other than the petitioner wishes to serve as conservator, he or she must file a separate summons and petition and serve it on all parties.

## 7. 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.

## 8. 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 the conservatorship proceedings that each individual wishes to relinquish.

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<sup>1</sup> See S.C. Code §62-5-408.

9. **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 is necessary, and who is the best individual to serve in that capacity. This is also an opportunity for opposing evidence to be presented. After all evidence has been heard, the judge will rule in the matter.

10. **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.

11. **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).

12. **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.

13. **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.

# 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):  
Mail (limited service):

[www.sled.us.gov](http://www.sled.us.gov)  
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.**





Case Number:

**INSTRUCTION SHEET FOR FORM #540GC  
PETITION FOR FINDING OF INCAPACITY, PROTECTIVE PROCEEDING,  
APPOINTMENT OF CONSERVATOR FOR AN ADULT**

This petition is intended to be used when a petitioner is seeking the appointment of a Conservator for an alleged incapacitated individual (A.I.I.). It can also be used when a petitioner seeks to have an A.I.I. found to be incapacitated for one of the other reasons stated below. The following actions may be requested with the filing of the attached petition:

• **FINDING OF INCAPACITY**

- The petitioner may be seeking to have the A.I.I. found to be an incapacitated individual for the purpose of a protective proceeding or the appointment of a Conservator. The court makes this determination, based in part a physician's examination and report and other relevant evidence. Generally, if there is no finding of incapacity, the court will not be able to proceed with any other action regarding the person who is alleged to be incapacitated.

• **If authority is needed to manage financial affairs, please read below for available options and check the appropriate box(es) in the Petition:**

- **PROTECTIVE ORDER** - Can be used to establish incapacity, allow for appointment of a special Conservator, establish a special needs trust, or to have a durable power of attorney for business and/or financial affairs ratified by the Court.
- **APPOINTMENT OF SPECIAL CONSERVATOR** - Can be used to request appointment of an individual or professional fiduciary to complete specific tasks within a specific period of time.
- **APPOINTMENT OF CONSERVATOR (including appointment on an EMERGENCY or TEMPORARY basis; see Forms #512GC and #513GC)** - Can be used to request permanent appointment of an individual or professional fiduciary and, if needed, appointment of a Conservator on an emergency or temporary basis before the permanent appointment can be made.
- **APPOINTMENT OF SUCCESSOR CONSERVATOR** - Can be used to request appointment of a successor to the permanent Conservator.

• **RIGHTS AND POWERS OF THE ALLEGED INCAPACITATED INDIVIDUAL**

- S.C. Code Ann. § 62-5-403(B)(7) requires the petitioner to indicate in the petition what rights the Court is being asked to remove from the A.I.I. For protective proceedings, those rights are stated in S.C. Code Ann. § 62-5-407(B). The burden of proof will be on the petitioner to show why certain rights should be removed. Rights not asked to be removed or not stated as being removed in the court order will be retained.
- If the A.I.I. is found to be incapacitated based on mental illness, "mental deficiency," "mental defect," or an impairment other than solely a physical impairment or disability, the court is required to report the name of the incapacitated individual to the S.C State Law Enforcement Division (SLED), pursuant to S.C. Code Ann. § 23-31-1020. **He or she will not be allowed to purchase, possess, or have access to firearms or ammunition, pursuant to S.C. Code Ann. § 23-31-1040(A).**

STATE OF SOUTH CAROLINA

COUNTY OF

IN THE MATTER OF:

an alleged incapacitated individual.

Petitioner(s),

vs.

Respondent(s).\*

▲ PROBATE COURT USE ONLY ▲
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IN THE PROBATE COURT  
CASE NUMBER -GC- -

**PETITION FOR** (check all that apply):

- FINDING OF INCAPACITY
- PROTECTIVE ORDER
- APPOINTMENT OF:
  - CONSERVATOR
  - SPECIAL CONSERVATOR
  - SUCCESSOR CONSERVATOR

\*You must include the alleged incapacitated individual (A.I.I.) as a Respondent.

1. Petitioner(s):

Relationship to the A.I.I., if any, or your interest in this proceeding:

2. **Information about A.I.I.**

Name: \_\_\_\_\_ Age: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_  
 Last 4 digits of Social Security Number: XXX-XX-\_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Preferred Telephone: \_\_\_\_\_ Secondary Telephone: \_\_\_\_\_  
 Email: \_\_\_\_\_

The address provided for the A.I.I. is his/her: Home ; a Facility ; Other  (please specify)

3. **Existing legal documents and/or legal appointments relating to the A.I.I.**

- To my knowledge, the A.I.I:
- |                                    |   |
|------------------------------------|---|
| <input type="checkbox"/> Does have | <input type="checkbox"/> Does <u>not</u> have a Will                                    |
| <input type="checkbox"/> Does have | <input type="checkbox"/> Does <u>not</u> have a general Durable Power of Attorney (POA) |
| <input type="checkbox"/> Does have | <input type="checkbox"/> Does <u>not</u> have a Health Care POA                         |
| <input type="checkbox"/> Does have | <input type="checkbox"/> Does <u>not</u> have a Living Will                             |
| <input type="checkbox"/> Does have | <input type="checkbox"/> Does <u>not</u> have a Guardian                                |
| <input type="checkbox"/> Does have | <input type="checkbox"/> Does <u>not</u> have a Conservator or Trustee                  |

If the A.I.I. does have any of the above-named documents, copies must be provided with this Petition or an explanation provided as to why the document is not available.

4. **Jurisdiction:**

The A.I.I. has been physically present in South Carolina for the six (6) month period immediately preceding the filing of this petition or for at least six (6) consecutive months ending within the six (6) month period immediately preceding the filing of this petition.

**Case Number:**

If the A.I.I. has not been physically present in South Carolina for the period of time described above, explain what connections the A.I.I. has to South Carolina. Please refer to S.C. Code Ann. §§ 62-5-700 through 62-5-711.

5. **Venue** (check all that apply):

Venue for this proceeding is proper in this county because the A.I.I.:

- resides in this county and has resided in this county for more than six (6) months;
- resides in this county (*this is his/her county of residence*);
- is physically present in this county at this time;
- does not reside in this state but owns real or personal property in this county; or
- does not reside in this state but has the right to take legal action in this county (a copy of the pleadings will be required).

If the A.I.I. has not resided in this county for the six (6) months preceding this action, state the address where the A.I.I. did reside or is currently residing:

6. **Information about family of the A.I.I.** – You must provide information about the spouse and any children of the A.I.I.; if there is no spouse or adult children, then list his/her parents. If no parents are living, then list the closest adult relative(s).

**\*\*Spouse:**

Address:

City/State/Zip:

Preferred Telephone:

Secondary Telephone:      \_

Email:

**\*\*If deceased, a certified death certificate is required.**

Children of A.I.I.:

Name

Address

Year of Birth

**(IF REQUIRED)** Living Parents of A.I.I.:

Name

Address

**(IF REQUIRED)** Closest Living Adult Relative(s) of A.I.I. – use additional paper if needed:

Adult Relative:

Address:

City/State/Zip:

Preferred Telephone:

Secondary Telephone:

Email:

Case Number:

7. Information about any other interested parties such as a Guardian, Conservator, trustee, representative payee, agent under a general durable power of attorney, or a health care agent under a health care power of attorney.

Name	Address	Relationship to A.I.I.
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8. **Rights and Powers of the A.I.I.** (See S.C. Code Ann. § 62-5-407(B))

(If you are the A.I.I. in this matter, you should be prepared to defend the assertion that any of the following rights should be removed; however, the burden is on the Petitioner to show why.)

Do you believe the A.I.I. should **retain** the following rights to:

- |    |   |                              |                             |
|----|---|------------------------------|-----------------------------|
| a. | Buy, sell, or transfer real property?     | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| b. | Buy, sell, or transfer personal property? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| c. | Make, modify, or terminate contracts?     | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| d. | Make significant purchases?               | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| e. | Transact business of any type?            | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| f. | Bring or defend a lawsuit?                | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| g. | Create a will?                            | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| h. | Create a trust?                           | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| i. | Pay his or her bills?                     | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| j. | Make gifts?                               | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| k. | Vote?                                     | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

If you answered NO to any of the above-listed rights, please explain:

9. Any other rights and powers not specifically stated here that the Court should address:

10. Please note any of the rights in Question 8 you believe should be given to the Conservator (*vested in the Conservator*) to exercise on behalf of the incapacitated person. (*Some rights, such as voting, cannot be given to a Conservator.*):

**11. AUTHORITY TO MANAGE FINANCIAL AFFAIRS OF THE A.I.I.**

- a. Why do you believe the A.I.I. needs a Conservator or protective order? Provide a brief description of the nature and extent of the alleged incapacity. (See S.C. Code Ann. § 62-5-403(B)(6)).
- b. Is there a less restrictive alternative? If so, please explain.
- c. In what ways is the alleged incapacitated individual able to provide for health, education, maintenance, and support for himself/herself and his or her dependents?



Case Number:

**VERIFICATION**

The Petitioner, being sworn, states: That the facts set forth in the foregoing Petition are true to the best of the Petitioner's knowledge, information, and belief.

SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Applicant/Petitioner  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Print Name: \_\_\_\_\_  
Notary Public for: \_\_\_\_\_  
(State) \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
(Date) \_\_\_\_\_

Preferred Telephone: \_\_\_\_\_  
Secondary Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Co-Applicant/Petitioner  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Print Name: \_\_\_\_\_  
Notary Public for: \_\_\_\_\_  
(State) \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
(Date) \_\_\_\_\_

Preferred Telephone: \_\_\_\_\_  
Secondary Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

**This section is to be signed by the individual(s) nominated to serve in one of the roles listed below.**

**QUALIFICATION AND STATEMENT OF ACCEPTANCE**

I agree to serve as appointed and to perform the duties and discharge the trust of the office of (*check the applicable choices*):  Conservator,  Special Conservator,  Successor Conservator for \_\_\_\_\_ (*Name of A.I.I.*) .

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF

IN THE MATTER OF:

an alleged incapacitated individual.

▲ <b>PROBATE COURT USE ONLY</b> ▲
IN THE PROBATE COURT CASE NUMBER      -GC-      -
<b>ACCEPTANCE OF SERVICE;          RENUNCIATION/NOMINATION</b>

**ACCEPTANCE OF SERVICE**

I accept service of a copy of the Summons and Petition in this matter pursuant to Rule 4(j), SCRPC at the following location: \_\_\_\_\_ on the following date: \_\_\_\_\_ ; and/or

**RENUNCIATION/NOMINATION FOR CONSERVATORSHIP**

(Check only one of the following two boxes):

I renounce my right to be considered for appointment as conservator; OR  
 I renounce my right to be considered for appointment as conservator and nominate the following person:

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Preferred Telephone: \_\_\_\_\_  
 Secondary Telephone: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Relationship to alleged incapacitated individual: \_\_\_\_\_

**RENUNCIATION/NOMINATION FOR GUARDIANSHIP**

(Check only one of the following two boxes):

I renounce my right to be considered for appointment as guardian; OR  
 I renounce my right to be considered for appointment as guardian and nominate the following person:

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Preferred Telephone: \_\_\_\_\_  
 Secondary Telephone: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Relationship to alleged incapacitated individual: \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

Print Name: \_\_\_\_\_  
 Notary Public for: \_\_\_\_\_  
 \_\_\_\_\_ (State)  
 My Commission Expires: \_\_\_\_\_ (Date)

Preferred Telephone: \_\_\_\_\_  
 Secondary Telephone: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Relationship to the alleged incapacitated individual: \_\_\_\_\_