

OPENING ADULT GUARDIANSHIPS

*Unless otherwise noted, all forms may be obtained at www.sccourts.org/forms.
You should consult an attorney for advice.

1. 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.

2. PETITION (FORM 530GC*)

A summons and a petition (Form 530GC) must be completed and filed, along with a filing fee of \$150.00 (unless petitioner is found to be indigent), to begin the process of appointing a guardian for an incapacitated adult.

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

3. CRIMINAL BACKGROUND CHECK.

The proposed guardian must file a criminal background check from his or her state of residence. The petitioner/petitioner's attorney is responsible for ensuring that this is requested and delivered to the court. Once received, the court will review these documents and note any questionable items, such as arrests. Attached to this guide is information for obtaining a background check.

4. SERVICE OF SUMMONS AND PETITION.

As soon as reasonably possible (within 120 days of filing), petitioner is required to 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 guardian of an incapacitated adult. 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 guardian, they should consult an attorney. If someone other than the petitioner wishes to serve as guardian, 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 (FORM 515GC)

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

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 hearing notice will indicate the date, time, and location of the hearing. 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 guardian 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. **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).

11. **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.

12. **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.

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.

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):

www.sled.us.gov

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.

STATE OF SOUTH CAROLINA

COUNTY OF:

IN THE MATTER OF:

Decedent Alleged Incapacitated Individual

▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT
CASE NUMBER _____ - _____ - _____

Petitioner(s),

vs.

Respondent(s).*

SUMMONS

*For Guardianship/Conservatorship matters, you must include the alleged incapacitated individual as a Respondent.

TO THE RESPONDENT(S) LISTED ABOVE:

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the Petitioner(s) listed above at the following address(es):

Please Type or Print.

(Name of Petitioner/Attorney for Petitioner)

(Street Address or Mailing Address)

(City, State, and Zip Code)

Your Answer must be served on the Petitioner at the above address within **thirty (30) days** after the service of this Summons and Petition upon you, exclusive of the day of such service; and if you fail to answer the Petition within that time, judgment by default will be rendered against you for the relief demanded in the Petition.

Signature of Petitioner(s)/Attorney for Petitioner(s)

Date: _____

Case Number:

**INSTRUCTION SHEET FOR FORM #530GC
PETITION FOR FINDING OF INCAPACITY, APPOINTMENT OF GUARDIAN,
APPOINTMENT OF SUCCESSOR GUARDIAN**

Payment of the filing fee or filing of a Motion and Affidavit to Proceed In Forma Pauperis (see Form #SCCA405PC) is required when this petition is filed. The petition is intended to be used when a petitioner is seeking the appointment of a Guardian for an alleged incapacitated individual (A.I.I.). It can also be used when a petitioner seeks to have a Successor Guardian appointed for an incapacitated individual. 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 the appointment of a Guardian. This is determined by the Court based upon 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 make decisions regarding health care, medical treatment, medical decisions, or appropriate placement for the A.I.I., please read below for situations in which a guardianship may be needed and check the appropriate box(es) in the Petition:**

- **APPOINTMENT OF GUARDIAN (including appointment on an EMERGENCY or TEMPORARY basis; see Forms #512GC and #513GC)** - Can be used to request appointment of an individual, including a professional Guardian, on an emergency, temporary, and/or permanent basis to be the substitute health care decision-maker for an alleged incapacitated individual.
- **APPOINTMENT OF SUCCESSOR GUARDIAN** - Can be used to request appointment of a successor to the permanent Guardian.
- **IF NOMINATED TO SERVE IN A WILL** – Based on the facts of the case and the filings of the parties, pursuant to S.C. Code Ann. § 62-1-100, it is within the discretion of the Court to determine whether a testamentary Guardian designation in a will executed by a parent or spouse prior to January 1, 2019, the effective date of the revisions to Article 5 of the S.C. Probate Code, will fall under the processes and procedures of the 1987 Probate Code or under the processes and procedures enacted by the 2017 amendments. *(See §62-5-301 of the 1987 Probate Code versus the changes to §62-5-301 enacted by the 2017 amendments.)*

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

- S.C. Code Ann. § 62-5-303(B)(7) requires that the petitioner must indicate in the petition what rights the Court is being asked to remove from the A.I.I. For guardianships those rights are stated in S.C. Code Ann. § 62-5-304A. 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 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).**

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 SC Code §§ 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; or
- is admitted to an institution in this county pursuant to an order of a court of competent jurisdiction, but this is not the county of residence.

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 where he/she 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: _____
 Telephone: (Home): _____ (Cell): _____
 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: _____
 Telephone: (Home): _____ (Cell): _____
 Email: _____

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

Name	Address	Relationship to A.I.I.

Case Number:

8. Rights and Powers of the A.I.I. (See § 62-5-304A.)

(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. Make decisions about health care and medical treatment? YES NO
- b. Choose a physician? YES NO
- c. Make end-of-life decisions? YES NO
- d. Authorize disclosure of confidential information? YES NO
- e. Choose where to live? YES NO
- f. Participate in social and religious activities? YES NO
- g. Vote? YES NO
- h. Consent to or refuse educational services? YES NO
- i. Contract for marriage? YES NO
- j. File for divorce? YES NO
- k. Travel independently? YES NO
- l. Be employed without Guardian consent? YES NO
- m. Operate a vehicle? YES NO
- n. Pay his or her bills? YES NO
- o. Enter into contracts? YES NO
- p. Bring or defend a lawsuit? YES NO
- q. Make gifts? YES NO
- r. Create a will? YES NO
- s. Create a trust? YES 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 Guardian (vested in the Guardian) to exercise on behalf of the incapacitated individual and/or for which the written consent of the Guardian should be obtained prior to exercising such right. Some rights, such as voting, cannot be given to the Guardian.

11. THE AUTHORITY TO MAKE DECISIONS ABOUT HEALTH CARE, MEDICAL TREATMENT, AND PLACEMENT FOR THE A.I.I.

a. Why do you believe the A.I.I. needs a Guardian/Successor Guardian to provide continuing care and supervision? Provide a brief description of the nature and extent of the alleged incapacity. (See 62-5-403(B)(6)).

b. Is there a less restrictive alternative? If so, please explain.

Case Number:

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?

d. Is it necessary to hold any type of emergency or temporary proceeding to protect the physical person of the A.I.I., to make immediate decisions concerning health care or medical treatment, or is the appointment of a temporary Guardian necessary before a final hearing can be held on this Summons and Petition? (If seeking emergency or temporary relief, use Form #512GC or Form #513GC.)

NO. YES. If yes, please explain:

e. Why does the A.I.I. need a Guardian to give consents or approvals that may be necessary to enable the A.I.I. to receive medical or other professional care, counsel, treatment?

f. What does the A.I.I. need for care, assistance, protection, or supervision on a daily basis?

g. Has a Guardian appointed by a will accepted such appointment?

NO. YES. If yes, please explain and provide a copy of the will.

h. I request the appointment of (if someone other than Petitioner):

Name: _____
Relationship to A.I.I.: _____
Address: _____
City/State/Zip: _____
Telephone: (Home): _____ (Cell): _____
Email: _____

i. Priority of appointment for the proposed Guardian (Petitioner or person named in 11h., above):

- A previously appointed Guardian or his/her nominee;
- Person nominated to serve as Guardian by the A.I.I., if the A.I.I. has sufficient mental capacity to make a reasoned choice;
- An agent designated in a recorded Power of Attorney whose authority includes powers relating to the care of the A.I.I. or their nominee;
- Spouse of the A.I.I. or person nominated as testamentary Guardian in the probated will of the spouse or their nominee;
- Adult child of the A.I.I. or their nominee;
- Parent of the A.I.I. or person nominated as testamentary Guardian in the probated will of the parent or their nominee;
- Closest adult relative to the A.I.I. (specify relationship); _____
- Person with whom the A.I.I. resides (this does not include a health care facility, group home, homeless shelter, or prison);
- Person nominated by a health care facility caring for the A.I.I.; or
- Other (specify): _____

Case Number:

j. What does the A.I.I. own?

- Real property - Address: _____
- Vehicle - Make/Model/Value: _____
- Bank Account - Bank and current balance: _____
- Monthly Income – Source and amount: _____

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: _____
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.

▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT
CASE NUMBER -GC- -

**ACCEPTANCE OF SERVICE;
RENUNCIATION/NOMINATION**

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: _____