

OPENING ADULT GUARDIANSHIPS

*Unless otherwise noted, all forms may be obtained at www.sccourts.org/forms

1. OVERVIEW OF ADULT GUARDIANSHIP

A Guardian is a person appointed for an incapacitated adult to make routine and non-routine healthcare decisions for the incapacitated adult. To have a Guardian appointed by this court, the incapacitated adult must be a resident of Colleton County. This court determines who has the authority to serve as the Guardian pursuant to S.C. Code Ann. § 62-5-311.

2. PETITION (FORM 530GC)

A summons and a petition (Form 530GC) must be completed and filed with the court in order to begin the process of appointing a Guardian for an incapacitated adult. An initial filing fee of \$150.00 must also be paid. In all cases, a Guardian *ad Litem* is appointed by the court to represent the interests of the incapacitated adult. The Guardian *ad Litem* must be an attorney, but if the incapacitated adult has chosen his or her own attorney, the person appointed by the court will only serve as the Guardian *ad Litem*. The court also appoints a Visitor, who must meet certain qualifications stated below. This person visits the incapacitated person to report the living conditions and the general well-being of the incapacitated person to the court. The appointed Visitor must be a person trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no special interest in the proceedings. The Petitioner is responsible for paying the fees associated with the Guardian *ad Litem* and Visitor.

3. PHYSICIANS/EXAMINERS (FORMS 533PC, 538PC & 541PC)

The court will appoint two physicians/examiners to report the physical and mental condition of the incapacitated adult to the court. At least one of the examiners appointed must be a medical doctor. Another medical professional, such as a nurse, social worker, or psychologist may be appointed as the second examiner. The Court will issue an Order appointing examiners listing the names of the two designated examiners (Form 533PC). Each examiner must complete a Doctor's Affidavit Regarding Capacity (Form 541PC) and an Examiner's Report (Form 538PC). If the examiners charge a fee for their report, the Petitioner is responsible for payment.

4. CRIMINAL BACKGROUND CHECK

The proposed Guardian must file a criminal background check from the state where they are a resident. The petitioner or 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.

5. NOTICE TO INTERESTED PARTIES

The summons and petition must be served on all interested parties, the alleged incapacitated person, and the Guardian *ad Litem* for the incapacitated adult. Other interested parties may

include the nearest relative or relatives of the incapacitated person. All parties must be served in accordance with Rule 4 of the South Carolina Rules of Civil Procedure. Service is not required upon the petitioner. Proof of service must be filed with the court. The service can be in the form of personal delivery, certified green cards (from certified mail), or signed acceptance of service. Ordinary first class mail is not sufficient for service. The Guardian *ad Litem* has the option of waiving personal service on the incapacitated person. In this case, the Guardian *ad Litem* must file a Waiver (Form 111PC) with the court. This Waiver must be specific to include the case number, name of incapacitated person, and what items are being waived. **The petitioner or petitioner's attorney is responsible for ensuring that all proper parties have been served with the summons and petition and proper proof of service has been filed with the court.**

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 (Form 302PC). If family members do not wish to renounce their right to serve and object to the appointment of the petitioner as Guardian, they must appear at the hearing and are advised to obtain legal counsel for representation at the hearing.

7. WAIVERS (FORM 111PC)

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 111PC). This form is used to waive any rights to the Guardianship proceedings that the individual wishes to relinquish.

8. NOTICE OF HEARING & HEARING

Once all of the above documents are received, a hearing will be scheduled in the matter. 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 court sends the notice of hearing to the parties. The right to receive notice twenty (20) days prior to the hearing can also be waived by completing Form 111PC. 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.

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. See S.C. Code Ann. §62-5-101(1) at <http://scstatehouse.gov/code/t62c005.php>
- 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. See S.C. Code Ann. §62-5-311 at <http://scstatehouse.gov/code/t62c005.php>
- 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, but usually the Court will appoint only one person. Two people may be appointed in special circumstances. In order for the situation to work best for the ward, the two people must get along and be willing to work together on all decisions. Co-guardians are most often appointed when they are the parents of an incapacitated adult, or in cases where there are adult children of an incapacitated parent. 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.

OVERVIEW OF DUTIES OF A GUARDIAN

1. ANNUAL REPORT OF GUARDIAN (FORM 534PC)

Other than specifics addressed by the judge that may need to be taken care of according to the situation, the only obligation of the Guardian to the court is to file an Annual Guardian Report (Form 534PC), once a year. This report is a standard form available on the website and in our office that is due one year from the date of appointment of Guardian and annually thereafter. This report consists of several questions and serves as an update to the court on the status of the incapacitated individual.

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

2. CLOSING

If the incapacitated adult becomes capable of handling his or her own affairs, the Guardian must file a Petition for Discharge (Form 571PC) with supporting documentation of the change in status for the incapacitated adult. If the incapacitated person dies, the Guardian must file a certified death certificate and Petition for Discharge (Form 571PC). The court will review these documents and then proceed in closing the file. At that time, a Termination of Appointment will be issued relieving the Guardian of their duties.

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

PROBATE COURT

IN THE MATTER OF _____

CASE NUMBER _____

RENUNCIATION OF RIGHT TO SERVE AS GUARDIAN

The undersigned hereby renounces his/her right to serve as GUARDIAN of the above person, who is alleged to be incapacitated, and relinquishes any statutory right except as indicated below (you must check and fill out #1 **or** check #2; #3 is to indicate that you received the Summons & Petition) :

___1. I hereby exercise my right to nominate a GUARDIAN for the above-named person.
The name and address of the proposed nominated GUARDIAN is:

___2. I hereby waive my right to nominate anyone as GUARDIAN.

___3. I will accept service of a copy of the Summons and Petition for appointment of a GUARDIAN in this matter when they are served on me.

Executed this ___ day of _____, _____.

Signature: _____

Name (Print): _____

Address: _____

Telephone (Work): _____

(Home): _____

(Cell): _____

Witnessed by:

(Must be someone who is not a party to the action)

GUIDE FOR COMPLETING FORM 530GC
(Petition for Finding of Incapacity and Appointment of Guardian, available at
www.sccourts.org/forms**)**

Complete caption on each form. The case number will be assigned by Probate Court.

1. **CAPTION:** The Petitioner is the person seeking to have a guardian appointed for someone else. The Respondents are the alleged incapacitated person (“AIP”) and the other family members of the person for who a guardian is sought.
2. **PETITION FOR:** If no guardian has previously been appointed, the checkbox for “finding incapacity” should be checked, as well as the checkbox for “guardian”; if a guardian was previously appointed and a new guardian is required, check only “successor guardian.”
3. **RELATIONSHIP TO ALLEGED INCAPACITATED PERSON:** Complete this section, specifying your relationship.
4. **INFORMATION RE: ALLEGED INCAPACITATED PERSON:** The AIP is the one for whom a guardian is sought. Complete their information.
5. **JURISDICTION AND VENUE:** Check the appropriate boxes
6. **INFORMATION RE: FAMILY:** Complete the information of the spouse of the AIP and adult children; if none, supply info for next of kin.
7. **NATURE OF INCAPACITY:** Specify, in detail, why you believe the AIP is incapacitated.
8. **SECTION II:** Several of these questions ask for information about why and to what extent a guardian is necessary for the AIP. Complete all questions fully.
9. **TEMPORARY RELIEF:** If you believe that the AIP needs a guardian prior to a full hearing on the matter, complete this section. Please note, for the court to appoint a temporary guardian, it must be an emergency. Most situations are not an emergency.
10. **PERSONS WHO ARE TO RECEIVE NOTICE:** AIP must receive notice, in addition to his or her spouse, parents, and adult children. If the AIP has no spouse, parents, or children, list the next closest adult relative(s). Also, if the AIP has a guardian, conservator, or attorney-in-fact under a durable power of attorney, or the AIP is under someone’s care and control, these people must be listed also.
11. **VERIFICATION:** Petitioner must sign this section and have signature notarized. If petitioner is represented by an attorney, attorney must sign as well.
12. **QUALIFICATION AND ACCEPTANCE:** If the appointment is uncontested, this section may be completed prior to filing the Petition.

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)
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.**