

# RICHLAND COUNTY PROBATE COURT

## **Adult Conservatorship**

Richland County Probate Court is not qualified to give legal advice, nor can our staff assist you with completing the forms pertaining to this action. Should you need assistance, you may contact SC Legal Services at 803-799-9668 or the SC Bar Referral Service at 803-799-7100.

The following documents and information are required:

- \_\_\_\_\_ Summons and Petition for Protective Order or Appointment of Conservator (enclosed)
- \_\_\_\_\_ Filing Fee of \$150.00
- \_\_\_\_\_ Notice of Right to Counsel
- \_\_\_\_\_ Examiner's Report and Affidavit Regarding Capacity (enclosed)
- \_\_\_\_\_ Acceptance of Service; Renunciation/Nomination (if applicable-enclosed)
- \_\_\_\_\_ SLED background check or criminal background check from your state of residence  
(Instructions enclosed for SC Residents)
- \_\_\_\_\_ Credit Report for proposed Conservator (instructions enclosed)
- \_\_\_\_\_ Copies of Proposed Conservator's Driver's License/ID and social security card
- \_\_\_\_\_ Copies of alleged incapacitated adult's Driver's License/ID and social security card
- \_\_\_\_\_ Current Picture of Incapacitated Individual

All interested parties are required to be served with this action; therefore, Proof of Service should be perfected by way of the following methods:

- Acceptance of Service; Renunciation/Nomination (if applicable-enclosed)
- Certified mail (green card with interested parties signature)
- Personal Service (performed by a Process Server or you may contact Richland County Civil Process Division to have a Richland County Deputy serve such documents)

Richland County Probate Court charges for copies at \$.50 per page. Should you need copies of the above forms, please include with the original forms. Once they are filed, we will return your copies to you. Should you have procedural questions, please contact the Richland County Probate Guardianship/Conservatorship Division at 803-576-1962.

# OPENING ADULT CONSERVATORSHIPS

**\*\*Please note- PRIOR TO THE APPOINTMENT OF A CONSERVATOR AND/OR PROTECTIVE PROCEEDINGS, PROOF OF SERVICE MUST BE ACCOMPLISHED AND FILED WITH THE COURT. IN ADDITION, A HEARING IS REQUIRED BY STATUTE.**

**1. Q: What is a Conservator?**

**A:** A Conservator is a court appointed individual or entity that handles the management of financial affairs or property.

**2. Q: What individuals need a Conservator?**

**A:** There are two main categories of conservatorships. Any individual over the age of eighteen that suffers from a mental or physical illness or disability; mental deficiency; advanced age; chronic use of drugs or alcohol; or any other cause to the extent that the individual lacks sufficient understanding, insight or capacity to make responsible decisions concerning their financial affairs and have not executed the proper legal documents to name an agent to make decisions for them. For example, Durable Power of Attorney.

**3. Q: Who would be an Appropriate Conservator?**

**A:** An immediate family member, such as spouse, adult child, parent or adult sibling, would be an ideal conservator. If there are no immediate family members then the Court will look to other relatives or interested individuals, such as a neighbor or friend of the incapacitated adult. The need for financial or legal expertise may lead the Court to look for corporate entities, accountants or lawyers to serve in this capacity.

**4. Q: What must be filed to begin a Conservatorship proceeding for an alleged incapacitated adult?**

**A:** A Summons; Petition for Appointment of Conservator; \$150.00 filing fee; Examiner's Report and Affidavit Regarding Incapacity from a physician; Order appointing Physician; SLED report and Credit report for the proposed Petitioner, a copy of the proposed conservators driver's license, and a copy of the proposed conservators social security card.

**5. Q: What is the court's involvement once the Conservator is appointed?**

**A:** The Conservator is required to file an Inventory and Appraisal within thirty days of being appointed and the Conservator must annually report to the Court the income and approved disbursements along with the account statements and receipts of expenditures. The Court approves expenditures from the restricted accounts once the Conservator has filed the appropriate Application for Expenditures and supporting documentation. The Conservator should also inform the Court as to the whereabouts of the incapacitated adult. The Court has the authority to appoint visitors and guardian ad litem to check on the incapacitated adult because it is the Court's responsibility to make certain that the conservatorship is functioning in the best interest of the protected person. Fiduciary letters of conservatorship and Termination of conservatorships, shall be filed

and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the other counties where the protected person owns real estate.

6. **Q: Do I need an attorney to petition to be a Conservator?**

A: Due to the legal complexity of the Summons and Petition, the requirements of proper legal service on all interested parties including proper service on the alleged incapacitated adult, and the need for proper notice of the hearing to all interested parties, the Court recommends that the proposed Petitioner have an attorney.

7. **Q: Why is an attorney appointed as the Counsel for the protected person and why is one needed in this proceeding?**

A: Due to a recent policy change, this Court now selects Counsel for all incoming cases from a rotating list of attorneys in good standing with the South Carolina Bar that are willing to serve in this capacity or if the alleged incapacitated person has an attorney the Court will appoint that person. Due to the complex nature of the proceedings and the allegations that the adult is incapacitated and cannot handle their financial affairs, the Probate Court appoints an attorney for the alleged incapacitated adult. When an attorney is appointed, they are responsible for investigating the need for the Conservatorship as well as the proposed Conservator's ability to serve the protected person's best interests.

8. **Q: Will a surety bond be required for the appointment of a Conservator?**

A: A surety bond is similar to an insurance policy for the incapacitated person conditioned on the conservator carrying out his or her duties faithfully and appropriately. For adults with ongoing monthly expenditures, a surety bond is usually required. To alleviate the annual expense of the bond, the Richland County Probate Court allows the Conservator to open a restricted brokerage account. The financial institution that accepts the conservatorship funds in a restricted account executes a Restricted Account Agreement with the Court. The Agreement states that funds will not be disbursed and assets will not be sold without an Order from the Court. Both the Conservator and the financial institution agree to the terms set forth in the Agreement.

9. **Q: How do I obtain a SLED Report?**

A: You make a written request for the criminal report from SLED, P. O. Box 21398, Columbia, SC 29221-1398. Provide the following information about the Proposed Conservator to SLED: full name including maiden and alias names; date of birth; sex; race; and social security number. You must include \$25.00 (business check, certified check, money order, or cashier's check) per search and a self-addressed envelope. You may also make an internet request at [www.sled.sc.gov](http://www.sled.sc.gov) and you may pay for the search with a credit card.

10. **Q: How do I obtain a credit report?**

A: Fill out the credit history report written request. You may obtain a credit report from the following agencies: Equifax, P. O. Box 105252, Atlanta, GA 30348-5252. Equifax's phone number is (800) 685- 1111. Equifax also has an emergency fax request line (770) 375-3150. Internet access: [www.equifax.com](http://www.equifax.com) TransUnion, P. O. Box 1000, Chester, PA 19022 (800) 888-4213. Internet access: [www.transunion.com](http://www.transunion.com) You will need to provide the agency with driver's license number, social security number and date of birth for the proposed Conservator.

11. **Q: How do I know if Richland County is the appropriate place to file the petition?**

A: The law specifies where the proceedings are to take place and this is called venue. Venue for conservatorship proceedings is in the county where the incapacitated person resides if the person resides in the state or if the person does not reside in the state venue can be any county where the out of state resident owns property.

**12. Q: How does the Conservatorship terminate?**

**A:** If the capacity of the adult changes or if the incapacitated person passes away, the Conservator should file a Final Conservator Report regarding the assets and Application for Relief. If death is the reason for termination then a death certificate should be provided along with proof that a Personal Representative has been appointed. The Court will issue an Order for the transfer of assets to the individual that is no longer incapacitated or to the Personal Representative of the decedent's estate. A Receipt and Release shall be filed within ten (10) days of the release of assets. A hearing may be held before the assets of the estate are distributed. Fiduciary Letters and order terminating conservatorships, shall be filed and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the other counties where the protected person owns real estate.

# OVERVIEW OF DUTIES OF A CONSERVATOR

## 1. INVENTORY AND APPRAISEMENT (Form SSOGC)

Within thirty (30) days of the official court appointment of the Conservator, the Conservator must file an Inventory and Appraisal (Form 550PC). Documentation showing that the Conservatorship account has been established must accompany the Inventory and Appraisal. Fees are calculated and assessed based on the value of the assets.

## 2. APPLICATION FOR EXPENDITURE (Form 552GC)

The Application for Expenditure is necessary when the Conservator wishes to withdraw money from the minor's account(s). The request must be filed with the Court, along with a \$15.00 filing fee, listing the specific items requested for the protected person, the amount of the purchase, and the reason for the purchase. The court also requires that proper documentation for purchases be provided with the expenditure. For example, if the protected person needs clothing, then the Conservator must complete the Application for Expenditure, provide the filing fee, and provide documentation showing how much the clothing will cost. This documentation should be a quote directly from the place where the item will be purchased.

## 3. ANNUAL REPORT OF CONSERVATOR (Form

Six months after appointment, an interim accounting (Form 562PC) is required showing all receipts and disbursements during that period of time. Thereafter, all accountings will be required on a yearly basis. All cancelled checks and bank statements must accompany the accountings when filed. 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 person dies, the Conservator must file an Application for Relief and a Final Conservator Report listing all remaining assets, certified death certificate and a copy of the fiduciary letter showing who has been appointed for the protected person's estate. The Court will issue an Order to have the funds released to that person, and that person will need to sign a Receipt indicating they have received all assets from the Conservatorship. The court will review the file and proceed to close the file. At that time, a Termination of Appointment will be issued relieving the Conservator of his or her duties. If the protected person regains capacity, we will need an Application for Relief, updated Examiner's Report and Physician's Affidavit Regarding Capacity that shows the person has regained capacity. The Judge will issue an Order to terminate the Conservatorship and to give the protected person the ability to resume handling their financial affairs.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:

\_\_\_\_\_  
 Decedent  Alleged Incapacitated Individual

PROBATE COURT USE ONLY

IN THE PROBATE COURT

CASE NUMBER \_\_\_\_ GC40 \_\_\_\_

vs. Petitioner(s).

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 #540GC  
PETITION FOR FINDING OF INCAPACITY, PROTECTIVE PROCEEDING,  
APPOINTMENT OF CONSERVATOR FOR AN ADULT

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. 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.
- APPOINTMENT OF CONSERVATOR (Including appointment on an EMERGENCY or TEMPORARY basis; see Form # 512GC) - 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(8)(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(8). 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.

PROBATE COURT USE ONLY

Petitioner(s),  
vs.

Respondent(s) \*

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.

Age: \_\_\_\_\_

Name: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_  
 Last 4 digits of  
 Social Security Number: XXX-XX-\_\_\_\_\_  
 Address:  
 City/State/Zip:  
 Telephone: (Home): \_\_\_\_\_(Cell): \_\_\_\_\_  
 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 (9) 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.

FORM #540GC (112019)  
62-5-401, 62-5-404, 62-5-405, 62-5-407, 62-5-410, 62-5-411,  
62-5-412, 62-5-413, 62-5-414

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.

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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:

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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

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

Name

Address

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**(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: \_\_\_\_\_

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.
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Rights and Powers of the A.I.I. (See S.C. Code Ann. § 62-5-407(8))

*(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 law suit?               | <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(8)(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:

- d. Is any type of emergency or temporary proceeding needed to protect the funds, assets, or business affairs of the A.I.I.? (If seeking emergency or temporary relief, use Form # 512GC.)  
 No.  Yes. If yes, please explain:

- 
- e. Has the A.I.I. been rated incapable of handling his estate and monies after examination by the VA? (See S.C. Code Ann. § 62-5-403(8)(9)).  
 No.  Yes. If yes, please explain:

- 
- f. The following is a list of the real and personal property owned by the A.I.I., business affairs of the A.I.I., funds available to the A.I.I., or legal action necessary for the benefit of the A.I.I. and an estimate of the value: (An Inventory & Appraisement, Form # 550, shall be filed with the Court within thirty (30) days of the date of appointment.)

Description	Value
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- 
- g. I request the appointment of (if someone other than Petitioner):

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (Home): \_\_\_\_\_ (Cell): \_\_\_\_\_  
Email: \_\_\_\_\_

- h. Priority for the requested appointee (either the Petitioner or person named in 11g., above) is:

- Previously appointed conservator, guardian of property, or guardian of assets appointed by a court of another county or state;  
 Individual nominated by the A.I.I., who is deemed mentally capable of making such choice;  
 Spouse of A.I.I.;  
 Adult Child of A.I.I.;  
 Adult sibling of A.I.I. (specify relationship): \_\_\_\_\_  
 Closest adult relative (specify relationship): \_\_\_\_\_  
 Person with whom the A.I.I. resides (specify relationship): \_\_\_\_\_  
 Nominee of any of the above (specify who made nomination): \_\_\_\_\_ ; or  
 Other (specify): \_\_\_\_\_

- i. Does the proposed conservator plan on receiving any fees for serving as conservator?  
 No  Yes

If yes, indicate the hourly rate or desired compensation amount:

Occupation of proposed conservator:

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: \_\_\_\_\_

Preferred Telephone: \_\_\_\_\_

Notary Public for: \_\_\_\_\_

Secondary Telephone: \_\_\_\_\_

(State)

Email: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(Date)

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

Co-Applicant/Petitioner: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Print Name: \_\_\_\_\_

Preferred Telephone: \_\_\_\_\_

Notary Public for: \_\_\_\_\_

Secondary Telephone: \_\_\_\_\_

(State)

Email: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(Date)

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./.)

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

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
IN THE MATTER OF: )  
An alleged incapacitated individual. )  
)  
)  
)  
)  
)  
)  
)  
vs. )  
)  
)  
Respondent(s). )

PROBATE COURT USE ONLY

IN THE PROBATE COURT  
CASE NUMBER \_\_\_\_ GC40 \_\_\_\_\_

NOTICE OF RIGHT TO COUNSEL

You, the alleged incapacitated individual, have the right to choose your own attorney to represent you in the above matter.

If a notice of appearance by your own attorney has not been received by the Court within fifteen (15) days from the filing of the proof of service in this matter, the court will appoint an attorney for you.

Executed this            day of            '20

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

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

Attorney Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
FirmName: \_\_\_\_\_  
Bar Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attorney for: \_\_\_\_\_

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 40), 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: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF )  
 )  
IN THE MATIER OF: )  
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 )  
An alleged incapacitated individual )  
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**PROBATE COURT USE ONLY**

INTHE PROBATE COURT  
CASE NUMBER -GC-

**PROBATE COURT GUIDELINES FOR  
REPORTS BY APPOINTED EXAMINER**

- GUARDIANSHIP
- CONSERVATORSHIP
- PROTECTIVE PROCEEDING

A petition has been filed with the Probate Court for appointment of a guardian, conservator, or the issuance of a protective order. The person nominated in the petition is seeking appointment in order to assist the alleged incapacitated individual (A.I.I.).

Your role as an examiner is to help the Court determine whether and to what degree the A.I.I. is incapacitated and to assist the Court in the appointment of a guardian or conservator, or issuance of a protective order. You have been appointed because you have knowledge of the individual from a past professional relationship, you possess expertise in a desired area, or both.

Please review the definitions of "incapacity," "incapacitated individual," "guardian," and "conservator," which are defined in the Order Appointing Examiner (Form #533GC). In reviewing the definitions, please note that the standard is incapacity, and not incompetency. S.C. Code Ann. § 62-5-407(A) of the conservatorship statutes provides: "The court shall exercise its authority to encourage maximum self-reliance and independence of the protected person and issue orders only to the extent necessitated by the protected person's mental and adaptive limitations." S.C. Code Ann. § 62-5-304(A) of the guardianship statutes provides: "The court shall exercise its authority to encourage maximum self-reliance and independence of the incapacitated individual and issue orders only to the extent necessitated by the incapacity of the individual." Degrees of incapacity may exist, and the Court must adjudicate to what extent the A.I.I. should continue to possess certain rights.

After you conduct the examinations, interviews, or tests that are appropriate, submit your report to the Probate Court in written form unless directed by the Court otherwise. Please give a factual basis for your conclusions. Give any general background information, specific concerns or findings, and a prognosis where possible. You are encouraged, but not required, to attach a narrative report to your Examiner Report and Affidavit Regarding Capacity (Form #539GC).



STATE OF SOUTH CAROLINA )  
COUNTY OF )  
IN THE MATTER OF: )  
**An alleged incapacitated individual.** )

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

**EXAMINER REPORT AND AFFIDAVIT  
REGARDING CAPACITY**

Please answer the following questions concerning the alleged incapacitated individual (hereinafter, "patient") and provide explanations or additional comments and details at the end of this form or on an attached sheet of paper.

1. Patient's name:
2. Have you treated the patient previously? Yes  No   
If yes, how long?
3.
  - a) Date(s) and place(s) of all examination(s) within previous ninety (90) days:
  - b) Date(s) and place(s) of all examination(s) relied upon in making this report:
4. Please provide a diagnosis and assessment of the patient's mental and physical condition, including whether he/she is taking any medications that may affect his/her actions:

Are additional tests or assessments, such as lab tests, neuroimaging/MRI, neuropsychological testing, or other tests needed in order to give a more definitive diagnosis? If so, what further tests or examinations are needed?

5. Please specify which diagnoses and/or condition(s) are progressive, permanent, or temporary.  
Progressive:  
Permanent:  
Temporary:
6. Please describe the nature and extent of any incapacity, including specific impairments:

7. Please describe the nature and extent of the patient's abilities, including those that would allow him/her to accomplish certain tasks with reasonably available "supports and assistance"<sup>1</sup>:
8. Does the patient have the capacity *to* retain the following rights (If you cannot attest to yes or no, please explain what additional testis can be done to achieve that information):
- a) Marry or divorce? Yes  No  Unknown
  - b) Reside in a place of his/her choosing, and consent or withhold consent to any residential or custodial placement? Yes  No  Unknown
  - c) Travel without the consent of a guardian? Yes  No  Unknown
  - d) Give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment, and therapies? Yes  No  Unknown
  - e) Make end-of-life decisions including, but not limited to, a "do not resuscitate" order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration? Yes  No  Unknown
  - f) Consent or refuse consent *to* hospitalization and discharge or transfer *to* a residential setting, group home, or other facility for additional care and treatment? Yes  No  Unknown
  - g) Authorize disclosures of confidential information? Yes  No  Unknown
  - h) Operate a vehicle\*?
  - i) Vote?
  - j) Be employed without the consent of a guardian?
  - k) Consent to or refuse educational services?
  - l) Participate in social, religious or political activities?
  - m) Buy, sell, or transfer real or personal property or transact business of any type? Yes  No  Unknown
  - n) Make, modify, or terminate contracts? Yes  No  Unknown
  - o) Bring or defend any action at law or equity? Yes  No  Unknown
  - p) Any other rights and powers? Please list.

COMPLETE EXPLANATION(\$} FOR QUESTIONS a) through p) HERE.

If more space is required, use additional sheets and attach.

(\*If you answered "yes" to h), please state below whether a full driving evaluation has been conducted.)

<sup>1</sup>As defined in S.C. Code Ann. §62-5-101(23), "Supports and assistance" includes:

(a) systems in place for the alleged incapacitated individual to make decisions in advance or to have another person to act on his behalf, including, but not limited to, having an agent under a durable power of attorney, a health care power of attorney, a trustee under a trust, a representative payee to manage social security funds, a Declaration of Desire for Natural Death (living will), a designated health care decision maker under Section 44-66-30, or an educational representative designated under Section 59-33-310 to Section 59-33-370; and

(b) reasonable accommodations that enable the alleged incapacitated individual to act as the principal decision maker, including, but not limited to, using technology and devices; receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies.

9. Would the patient benefit from:

- a) Therapy or treatment? Yes  No
- b) Medical aids or equipment? Yes  No
- c) An operation or medical procedure(s)? Yes  No
- d) Psychiatric treatment? Yes  No

10. Has the patient had in the last six months:

- a) Hospitalization(s)? Yes  No
- b) Therapy or treatment? Yes  No
- c) Inpatient or outpatient surgery? Yes  No
- d) Major medical test(s)? Yes  No
- e) Psychological or psychiatric testing? Yes  No

11. In your opinion, does the patient have the ability to:

- a) effectively manage his/her property or individual financial affairs, provide for his/her support, or for the support of his/her legal dependents? Yes  No

If yes, is the ability limited in any way? Please explain:

- b) meet the essential requirements for his/her physical health, safety, or self-care. Yes  No

If yes, is the ability limited in any way? Please explain:

12. The patient continues to perform the following activities of daily living:

13. Does the patient have:

- a) A power of attorney? Yes  No  Unknown
- b) A healthcare power of attorney? Yes  No  Unknown
- c) A "living will"? Yes  No  Unknown

14. Does the patient have any of the following coverages?

- a) Health insurance? Yes  No  Unknown
- b) Medicare? Yes  No  Unknown
- c) Medicaid? Yes  No  Unknown
- d) Veteran's health care? Yes  No

15. Does the patient have a primary caregiver?

If yes, provide caregiver's name, address, and relationship to the patient.

16. Please identify the persons with whom you met or consulted regarding the patient's mental or physical condition:

**17. BASED UPON MY EVALUATION OF THIS PATIENT:**

- a.  **IDO NOT BELIEVE THIS PATIENT IS "INCAPACITATED."**<sup>2</sup> I do not find that he/she lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:
  - a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
  - b) manage his/her property or financial affairs or provide for his/her support of for the support of his/her legal dependents, necessitating the need for a protective order.
  
- b.  **IDO BELIEVE THIS PATIENT IS "INCAPACITATED"** to such an extent, that he/she lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:
  - a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
  - b) manage his/her property or financial affairs or provide for his/her support of for the support of his/her legal dependents, necessitating the need for a protective order.

Use this space to provide explanations or additional comments.

SWORN to before me this _____ day of _____ _____ Print Name: _____ Notary Public for: _____ My Commission Expires: _____ _____ _____ _____	20         {State}         (Date)	Examiner's Signature:  Print Name: _____ Credentials: _____ _____ _____ (e.g., M.D., Ph.D., D.O., RN.) Address: _____ _____ Telephone: _____ _____
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<sup>2</sup>As defined in S.C. Code Ann. § 62-5-101(13), "Incapacity" means the inability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:

- a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
- b) manage his property or financial affairs or provide for his support of for the support of his legal dependents, necessitating the need for a protective order.

# HOW TO OBTAIN A SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED) CRIMINAL HISTORY REPORT

## 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:

Telephone Request: (803) 737-9000  
Mail: South Carolina Law Enforcement Division  
P.O. Box 21398  
Columbia, SC 29221-1398  
Web: [www.sled.sc.gov](http://www.sled.sc.gov)

## INFORMATION NEEDED

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

1. FULL name (including middle initial and suffixes as well as maiden and other names used)
2. Current mailing address
3. Current home phone number with area code
4. Social Security Number (individual must agree to the use of their social security number for name search)
5. Driver's License Number and the State where it was issued
6. Date of Birth

You must enclose a self-addressed stamped envelope with your request.

- **COST**

There is a \$25.00 fee per name, excluding maiden and alias names. The payment must be in the form of a money order, cashier's check or certified check, personal checks are not accepted.

# INFORMATION FOR SLED CHECK

Name

---

Address

---

Phone #

---

Social Security

---

Driver's License  
(Please list state)

---

Date of Birth

---

*By my signature, I acknowledge that the above information is required for a SLED background check and I am consenting to the use of the above information for purposes of a criminal background check for the Richland County Probate Court.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# 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.

## COST

The charge will be \$8.00 for Experian and \$10.00 for Equifax and Trans Union Corp.

A credit report will be provided for free if you have been denied credit, insurance or employment based on your credit report, within the last sixty (60) days.

## TIME

You should receive your credit report in five (5) to ten (10) days after the submission of your request.

# WRITTEN REQUEST TO OBTAIN MY CREDIT HISTORY REPORT

PLEASE PRINT

Name:

LAST NAME                      FIRST NAME                      INITIAL                      SUFFIX (Sr, Jr, etc.)

Current Address:

STREET ADDRESS                      APT.                      CITY                      PROVINCE                      POSTAL CODE

PREVIOUS ADDRESS(ES) (within last 5 years)

Previous Address:

STREET ADDRESS                      APT.                      CITY                      PROVINCE                      POSTAL CODE

STREET ADDRESS                      APT.                      CITY                      PROVINCE                      POSTAL CODE

Date of Birth:                      Social Security Number:  
MONTH    DAY    YEAR                      (OPTIONAL)

The name and last 4 digits of a major credit card:

WERE YOU DENIED CREDIT? NO [ ] YES [ ] BY WHICH INSTITUTION? \_\_\_\_\_  
WHEN? \_\_\_\_\_

=====

- Required are two (2) pieces of personal identification to process your request. (Example: driver's license, bank account statement, gas, phone, electricity or cable bill).
- If your current address has changed within the last ninety (90) days, a confirmation of address must be attached with your request in order to be processed. (Example: gas, phone, electricity or cable bill, bank account statement, driver's license).*
- You can expect to receive a copy of your personal credit report via regular mail within five (5) to ten (10) days. If you have any further inquiries about delivery, please contact us using the toll-free number of the company you chose.
  - Please note that if any corrections are necessary, you must complete the credit report update form enclosed with the credit report sent to you. This form - Consumer Credit Report Update Form - can also be found on-line at any of the web address given to you previously, by the Court.