

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF )  
 )  
 IN THE MATTER OF: )  
 )  
 \_\_\_\_\_, )  
 Decedent     Alleged Incapacitated Individual )  
 Minor         Other: \_\_\_\_\_ )

\_\_\_\_\_, )  
 Petitioner(s), )  
 vs. )  
 \_\_\_\_\_, )  
 Respondent(s).\*)

▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT

CASE NUMBER -GC- -

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

**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 seek to have the A.I.I. found to be an incapacitated for the purpose of appointing a Conservator or the issuance of another protective order. Incapacity is determined by the court based on a medical 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.
- A finding of incapacity may be made by the court because of the A.I.I.'s inability to meet the essential requirements for his or her physical health, safety, or self-care and/or the inability to manage his or her property or financial affairs or provide for his or her support or for that of his or her legal dependents. This could be because of allegations of incapacity that are based on, but not limited to, mental illness, significant intellectual disability, physical illness or disability, brain injury, a cognitive impairment such as dementia, chronic use of and/or addiction to illicit or prescription drugs, or chronic intoxication and/or addiction to alcohol. The presence of one or more of these conditions does not automatically prove incapacity, but it may be what prompts the filing of the petition.

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

- **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 a temporary basis before the permanent appointment can be made.
- **PROTECTIVE ORDER** - Can be used to establish incapacity, assist in establishing a Special Needs Trust, or to ratify (confirm) a durable power of attorney for business and/or financial affairs.
- **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 SUCCESSOR CONSERVATOR** - Can be used to request appointment of a successor to the previously appointed permanent Conservator.
- **EFFECT OF EXISTING POWER OF ATTORNEY (POA) FOR FINANCES AND BUSINESS AFFAIRS** - An existing, valid Durable General POA creates the presumption that there is a "support and assistance" (see Section 62-5-101(23)) that would eliminate the need for a conservatorship. If the petitioner wants to have the court confirm or ratify the POA, he or she may request a protective order. Otherwise, the Petitioner must show by clear and convincing evidence why that document is not valid, is not sufficient to meet the needs of the A.I.I., or present other issues that would support voiding that document, if the appointment of a conservator is requested.

• **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: )  
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\_\_\_\_\_, )  
an alleged incapacitated individual. )  
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\_\_\_\_\_, )  
Petitioner(s), )  
vs. )  
 )  
 )  
\_\_\_\_\_, )  
Respondent(s).\*

▲ PROBATE COURT USE ONLY ▲  
IN THE PROBATE COURT

CASE NUMBER -GC- -

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

- PETITION FOR** (check all that apply):
- FINDING OF INCAPACITY
  - PROTECTIVE ORDER
  - APPOINTMENT OF:  CONSERVATOR(S)  SPECIAL CONSERVATOR(S)
  - SUCCESSOR CONSERVATOR  TEMPORARY CONSERVATOR (on  
Emergency or Temporary Basis) or  
LIMITED CONSERVATOR

**1. Information about Petitioner(s):**

Petitioner(s): \_\_\_\_\_  
Address(es): \_\_\_\_\_  
Telephone (preferred): \_\_\_\_\_ Telephone (secondary): \_\_\_\_\_  
Email: \_\_\_\_\_  
Relationship to A.I.I. or proceeding: \_\_\_\_\_

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

A.I.I. Full Legal Name (include all known names): \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Last 4 digits of Social Security #: XXX-XX-\_\_\_\_\_  
Address: \_\_\_\_\_  
This address is a:  Private Home  Facility  Other (specify): \_\_\_\_\_  
Telephone (preferred): \_\_\_\_\_ Telephone (secondary): \_\_\_\_\_  
Email: \_\_\_\_\_  
Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_  
Height: \_\_\_\_\_ Weight: \_\_\_\_\_

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

- To my knowledge, the A.I.I.:
- Does have  Does not have a Will
  - Does have  Does not have a general Durable Power of Attorney (POA)
  - Does have  Does not have a Health Care POA
  - Does have  Does not have a Living Will
  - Does have  Does not have a Guardian
  - Does have  Does not 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. The Petitioner has the burden of showing why a conservatorship is needed if the A.I.I. has a Durable General POA.

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.

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: \_\_\_\_\_

Year of Birth: \_\_\_\_\_

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

**Children of A.I.I.:**

| Full Legal Name | Year of Birth | Full Address |
|-----------------|---------------|--------------|
| _____           | _____         | _____        |
| _____           | _____         | _____        |
| _____           | _____         | _____        |
| _____           | _____         | _____        |

See attached for additional children (check if applicable).

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

| Full Legal Name | Year of Birth | Full Address |
|-----------------|---------------|--------------|
| _____           | _____         | _____        |
| _____           | _____         | _____        |

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

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Relationship to A.I.I.: \_\_\_\_\_

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  | Relation to A.I.I. | Full Address |
|-------|--------------------|--------------|
| _____ | _____              | _____        |
| _____ | _____              | _____        |

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?       YES       NO
- B. Buy, sell, or transfer personal property?       YES       NO
- C. Make, modify, or terminate contracts?       YES       NO
- D. Make significant purchases?       YES       NO
- E. Transact business of any type?       YES       NO
- F. Bring or defend a lawsuit?       YES       NO
- G. Pay his or her bills?       YES       NO
- H. Make gifts?       YES       NO
- I. Vote?       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 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 A.I.I. able to provide for health, education, maintenance, and support for himself/herself and his or her dependents?

\_\_\_\_\_

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 Forms #512GC or #513GC.)  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 Department of Veterans Affairs (VA)? (See S.C. Code Ann. § 62-5-403(B)(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 #550GC, shall be filed with the Court within thirty (30) days of the date of appointment.)

Description

Value

| Description | Value |
|-------------|-------|
| _____       | _____ |
| _____       | _____ |
| _____       | _____ |
| _____       | _____ |
| _____       | _____ |
| _____       | _____ |

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

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

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

Preferred Phone: \_\_\_\_\_

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

Relationship to A.I.I.: \_\_\_\_\_

H. **Priority for the requested appointee(s)** (either the Petitioner(s) or person(s) 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;
- Agent designated in power of attorney relating to the management of A.I.I.'s property, financial affairs, or assets;
- Spouse of A.I.I.;
- Adult Child of A.I.I.;
- Parent of A.I.I.;
- 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: \_\_\_\_\_

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**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 me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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

Printed Name of Notary: \_\_\_\_\_

Notary Public for State of: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Signature of Petitioner: \_\_\_\_\_

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

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

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

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

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

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

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

Printed Name of Notary: \_\_\_\_\_

Notary Public for State of: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Signature of Co-Petitioner: \_\_\_\_\_

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

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

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

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

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

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**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(s)  Special Conservator(s)  Successor Conservator(s)  Temporary Conservator(s)  Limited Conservator(s).

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

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

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

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

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

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF \_\_\_\_\_ )  
 )  
 IN THE MATTER OF: )  
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 \_\_\_\_\_, )  
 an alleged incapacitated individual. )  
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 vs. )  
 )  
 \_\_\_\_\_, )  
 )  
 Respondent(s). )

▲ PROBATE COURT USE ONLY ▲  
 IN THE PROBATE COURT  
 CASE NUMBER -GC- -  
**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: \_\_\_\_\_  
 Firm Name: \_\_\_\_\_  
 Bar Number: \_\_\_\_\_  
 Address: \_\_\_\_\_

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

**Note: This form must be served on the Alleged Incapacitated Individual, along with your Summons and Petition.**