

STATE OF SOUTH CAROLINA

COUNTY OF Horry

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 #520GC
DUAL PETITION FOR APPOINTMENT OF GUARDIAN AND CONSERVATOR (FOR ADULT)**

This Dual Petition is intended to be used when a Petitioner is seeking the appointment of both a Guardian and Conservator for an alleged incapacitated individual (A.I.I.). The following actions may be requested and considered with the filing of the attached Petition:

- **Finding of Incapacity**
 - The Petitioner may be seeking to have the A.I.I. found to be incapacitated for the purpose of a protective proceeding, appointment of a Guardian, appointment of a Conservator, or the appointment of both a Guardian and a Conservator. This is determined by the court based on a physician's examination and report and other relevant evidence. Generally, if there is no finding of incapacity, the court will not be able to proceed with any other action regarding the person who is alleged to be incapacitated.
- **If authority is needed to manage financial affairs, please read below for available options and check the appropriate box(es) in the Petition:**
 - **PROTECTIVE ORDER** - Can be used to establish incapacity, allow for appointment of a Special Conservator, establish a Special Needs Trust, or to have a Durable Power of Attorney for business and/or financial affairs ratified by the Court.
 - **APPOINTMENT OF SPECIAL CONSERVATOR** - Can be used to request appointment of an individual or professional fiduciary to complete specific tasks within a specific period of time.
 - **APPOINTMENT OF CONSERVATOR (including appointment on an EMERGENCY OR TEMPORARY basis; see Forms #512GC and #513GC)** - Can be used to request permanent appointment of an individual or professional fiduciary and, if needed, appointment of a Conservator on a 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.
- **If authority is needed to make decisions regarding the physical person of an individual and his/her health care, please read below for available options and check the appropriate box in the Petition:**
 - **APPOINTMENT OF GUARDIAN (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 guardian and, if needed, appointment of a guardian on a temporary basis before the permanent appointment can be made.
 - **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 court's discretion to determine whether a testamentary guardian designation in the Will of 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 Code or under the processes and procedures enacted by the 2017 amendments. (See S.C. Code Ann. § 62-5-301 of the 1987 Code versus the changes to S.C. Code Ann. § 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) and 62-5-403(B)(7) require that the Petitioner must indicate in this Petition what rights the court is being asked to remove from the A.I.I. Those rights are stated in S.C. Code Ann. §§ 62-5-304A and 62-5-407(B). The burden of proof will be on the Petitioner to show why certain rights should be removed.
 - 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 probate 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).**

Case Number:

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE MATTER OF:)

an alleged incapacitated individual.)

Empty box for case number with 'PROBATE COURT USE ONLY' text and triangle markers.

IN THE PROBATE COURT
CASE NUMBER -GC- -

Petitioner(s),
vs.

Respondent(s).*

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

PETITION FOR (check all that apply):

- 1. [] FINDING OF INCAPACITY
- 2. If authority is needed to manage financial affairs, see below and check the appropriate box(es):
 - [] PROTECTIVE ORDER
 - [] APPOINTMENT OF SPECIAL CONSERVATOR
 - [] APPOINTMENT OF CONSERVATOR
 - [] APPOINTMENT OF TEMPORARY or LIMITED CONSERVATOR
 - [] APPOINTMENT OF SUCCESSOR CONSERVATOR
- 3. If authority is needed to make decisions regarding the physical person of an individual and his/her health care, see below and check the appropriate box:
 - [] APPOINTMENT OF GUARDIAN
 - [] APPOINTMENT OF TEMPORARY GUARDIAN
 - [] APPOINTMENT OF SUCCESSOR GUARDIAN

4. ALL PETITIONERS MUST COMPLETE THIS SECTION.

A. Petitioner(s):
Relationship to the A.I.I., if any, or interest in this proceeding:

B. Information about A.I.I.

Name: Age:
Date of Birth:
Last 4 digits of Social Security Number: XXX-XX-
Address:
City/State/Zip:
Telephone: (Preferred): (Secondary):
Email:
The address provided for the A.I.I. is his/her: []Home []a Facility []Other (please specify)

Case Number:

C. 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.

D. 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.

E. Venue. Venue for this proceeding is proper in this county because the A.I.I. (*check all that apply*):

- 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;
- 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;
- 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 where he/she is currently residing:

F. 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: (Preferred): (Secondary):

Email:

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

Children of A.I.I.:

Name

Address

Year of Birth

Case Number:

(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: (Preferred): (Secondary):

Email:

G. 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.

H. **Rights and Powers of the A.I.I.** (See S.C. Code Ann. §§ 62-5-304A and 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:

- | | | |
|---|------------------------------|-----------------------------|
| i. Buy, sell, or transfer real property? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| ii. Buy, sell, or transfer personal property? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| iii. Make, modify, or terminate contracts having to do with obligations of A.I.I.? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| iv. Make significant purchases? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| v. Transact business of any type? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| vi. Bring or defend a lawsuit?* | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| vii. Create a will? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| viii. Create a trust? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| ix. Pay his or her bills? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| x. Make gifts? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xi. Make decisions about health care and medical treatment, including consents? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xii. Choose a physician? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xiii. Make end-of-life decisions? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xiv. Consent to or refuse hospitalization, discharge, or transfer to residential, group home, or other? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xv. Authorize disclosure of confidential health or medical information? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xvi. Choose where to live? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xvii. Participate in social, religious, and political activities? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xviii. Consent to visitation with family, friends, others? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xix. Consent to or refuse educational services? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xx. Make, modify, or terminate contracts having to do with duties of the guardian? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxi. Contract for marriage? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxii. File for divorce? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxiii. Travel independently? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxiv. Be employed without guardian consent? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxv. Operate a vehicle? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxvi. Vote? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

Case Number:

If you answered NO to any of the rights listed in Question H., please explain:

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

- J. List any of the rights in Question H. you believe should be given to the Guardian or Conservator (*vested in the Guardian or Conservator*) to exercise on behalf of the incapacitated individual and/or for which the written consent of the Guardian or Conservator should be obtained prior to exercising such right. Some rights, such as voting, cannot be given to the Guardian or Conservator.

5. THE 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/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 temporary or emergency relief is sought, use Form #512GC or Form #513GC.)

No. Yes. If yes, please explain:

E. Has the A.I.I. been rated incapable of handling his/her 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 & Appraisal, Form #550GC, shall be completed and filed with the Court within thirty (30) days of the date of appointment.*)

Description

Value

Case Number:

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

Name:

Address:

City/State/Zip:

Telephone: (Preferred) : (Secondary):

Email:

H. Priority of appointment for the proposed appointee (*Petitioner or person listed in 5G., above*) to serve as Conservator:

- Previously appointed Conservator/Guardian of Property 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*): ;
- 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:

6. AUTHORITY TO MAKE DECISIONS ABOUT HEALTH CARE OR 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 S.C. Code Ann. § 62-5-403(B)(6)*).

B. In your opinion, are less restrictive options than Guardianship available or appropriate?

No Yes 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 temporary or emergency proceeding needed to protect the physical person of the A.I.I. or to make emergency health care decisions for the A.I.I.? (*If temporary or emergency relief is sought, use Form #512GC or Form #513GC.*)

No Yes If yes, please explain:

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E. Despite his/her alleged incapacity, can the A.I.I., with assistance, guide or direct decisions about his/her physical person, health care, and medical treatment?

No Yes Please explain:

F. To what extent should the Guardian be permitted to give consents or approvals that may be necessary to enable the A.I.I. to receive medical or other professional care, counsel, medical treatment, or services?

G. Are you aware of a Will that nominates a Guardian?

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:

Address:

City/State/Zip:

Telephone: (Preferred): (Secondary):

Email:

I. Priority of appointment for the proposed appointee (*Petitioner or person listed in 6H., above*) to serve as Guardian is:

- Previously appointed Guardian, Guardian of the Person, Conservator (of the person) 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*): ;
- Other (specify): .

7. **ALL PETITIONERS MUST COMPLETE THIS SECTION** (*Check all that apply*).

- A. I request that the Court set a date, time, and place for a hearing on this Petition and that the Court find whether the A.I.I. is incapacitated.
- B. I believe that this is an uncontested matter and request that the Court consider making an appointment without a holding a formal hearing or that it consider holding an informal proceeding.
- C. I request that if the Court finds that the A.I.I. is incapacitated, that a determination be made of what rights should be retained and what rights should be removed as a result of the finding of incapacity and, further, what rights should be vested in a Guardian or Conservator, as appropriate.
- D. I request that if the Court finds that the need for appointment of a Special Conservator or Conservator is proper, that the Court appoint as the Special Conservator or Conservator for the above person and that letters of Special Conservatorship or Conservatorship be issued, along with a protective order.

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- E. I request that if the Court finds that the need for appointment of a Guardian or Co-Guardians is proper, that the Court appoint _____ as the Guardian or Co-Guardians for the A.I.I. and that letters of Guardianship or Co-Guardianship be issued.

SEE NEXT PAGE FOR SIGNATURE BLOCKS

Case Number: _____

VERIFICATION

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

SWORN to before me this _____ day of _____, 20____.

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____.

Signature: _____
Print Name: _____
Address: _____

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

Preferred Telephone: _____
Secondary Telephone: _____
Email: _____

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

QUALIFICATION AND STATEMENT OF ACCEPTANCE

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

Executed this _____ day of _____, 20____.

Signature: _____
Printed Name: _____
Requesting Appointment as: _____

Signature: _____
Printed Name: _____
Requesting Appointment as: _____