

**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 HORRY)
)
IN THE MATTER OF:)
)
_____,)
an alleged incapacitated individual.)

▲ PROBATE COURT USE ONLY ▲
IN THE PROBATE COURT

_____,
Petitioner(s),
vs.

CASE NUMBER -GC-26-

_____,
Respondent(s).*

*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: _____

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: _____

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 HORRY)
)
 IN THE MATTER OF:)
)
 _____,)
 an alleged incapacitated individual.)
)
)
 _____,)
)
 vs.)
)
 _____,)
)
 Respondent(s).)

▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT
 CASE NUMBER -GC-26-

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.