

STATE OF SOUTH CAROLINA

COUNTY OF: \_\_\_\_\_

IN THE MATTER OF:

Decedent     Alleged Incapacitated Individual

▲	PROBATE COURT USE ONLY	▲
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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 #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 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 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 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(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:  
\_\_\_\_\_  
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.**  
Name: \_\_\_\_\_ Age: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Last 4 digits of  
Social Security Number: XXX-XX-\_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Preferred Telephone: \_\_\_\_\_ Secondary Telephone: \_\_\_\_\_  
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.:  
 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.

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.

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

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

Children of A.I.I.:		
Name	Address	Year of Birth
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**(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: \_\_\_\_\_  
Preferred Telephone: \_\_\_\_\_ Secondary Telephone: \_\_\_\_\_  
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(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?     | <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 lawsuit?                | <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(B)(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 Forms #512GC and #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 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 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: \_\_\_\_\_  
Preferred Telephone: \_\_\_\_\_ Secondary Telephone: \_\_\_\_\_  
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: \_\_\_\_\_

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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 before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Print Name: \_\_\_\_\_  
Notary Public for: \_\_\_\_\_  
(State)

My Commission Expires: \_\_\_\_\_  
(Date)

Applicant/Petitioner Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Preferred Telephone: \_\_\_\_\_  
Secondary Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

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

Print Name: \_\_\_\_\_  
Notary Public for: \_\_\_\_\_  
(State)

My Commission Expires: \_\_\_\_\_  
(Date)

Co-Applicant/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,  Special Conservator,  Successor Conservator for \_\_\_\_\_  
(Name of A.I.I.)

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

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

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