

## **OPENING ADULT CONSERVATORSHIPS**

\*Unless otherwise noted, all forms may be obtained at [www.sccourts.org/forms](http://www.sccourts.org/forms)

### **1. OVERVIEW OF ADULT CONSERVATORSHIP**

A Conservator is a person appointed for an incapacitated adult to conduct the protected person's business and financial affairs. In order to have a Conservator appointed by this court, the incapacitated person must be a resident of Colleton County or own real property in Colleton County. The Probate Court follows S.C. Code Ann §62-5-410 to determine who has the authority to serve as the Conservator.

### **2. PETITION (FORM 540GC)**

A summons and a petition (540GC) must be completed and filed with the court to begin the process of appointing a Conservator. An initial filing fee of \$150.00 must also be paid. Additional fees may be assessed after the filing of the Inventory and Appraisal. In all cases, a Guardian *ad Litem* is appointed by the court to represent the interests of the incapacitated adult. The Guardian *ad Litem* must be an attorney, but if the incapacitated adult has chosen his or her own attorney, the person appointed by the court will only serve as the Guardian *ad Litem*.

### **3. PHYSICIANS/EXAMINERS**

The court will appoint at least one examiner to report to the court as to the physical and mental condition of the incapacitated adult; that examiner must be a physician. In many cases two examiners are appointed because there has also been a guardianship action filed. The second examiner can be another physician, or another medical professional, such as a nurse, social worker, or psychologist. The Court will issue an Order appointing examiners. Once appointed, each examiner must complete a Doctor's Affidavit Regarding Capacity (541PC) and an Examiner's Report (538PC).

### **4. CRIMINAL BACKGROUND CHECK & CREDIT REPORTS**

The proposed Conservator must file both a credit report and a criminal background check from the state where they are a resident. The petitioner or petitioner's attorney is responsible for ensuring that both of these items are requested and delivered to the court. Once received, the court will review these documents and note any questionable items, such as unpaid bills or arrests. Information about obtaining the reports is attached.

### **5. NOTICE TO INTERESTED PARTIES**

The summons and petition must be served on all interested parties, the alleged incapacitated person, and the Guardian *ad Litem* for the incapacitated adult. Service is to be made in accordance with Rule 4 of the South Carolina Rules of Civil Procedure. Other interested parties may include the nearest relative or relatives of the incapacitated person. Service is not required upon the petitioner. Proof of service must be filed with the court. The service can be in the form of personal delivery, certified green cards (from certified mail), or signed acceptance of service.

Ordinary first class mail is not sufficient for service. The Guardian *ad Litem* has the option of waiving personal service on the incapacitated person. In this case, the Guardian *ad Litem* must file a Waiver (111PC) with the court. This Waiver must be specific to include case number, name of incapacitated person, and what items are being waived. **The petitioner or petitioner's attorney is responsible for ensuring that all proper parties have been served with the summons and petition and proper proof of service has been filed with the court.**

#### 6. **RENUNCIATION/NOMINATION**

Often more than one family member has legal priority to serve as the Conservator of an incapacitated adult. In these instances, family members may renounce their right to serve and nominate the person they believe to be the best candidate for Conservator. These individuals must execute a Renunciation/Nomination form (302PC). If family members do not wish to renounce their right to serve and object to the appointment of the petitioner as Conservator, they must appear at the hearing and are advised to obtain legal counsel for representation at the hearing.

#### 7. **WAIVERS (111PC)**

After service of the summons and petition upon all interested parties, each individual is allotted thirty (30) days to file an Answer. If that individual has no objections to the summons or petition, he/she can execute a waiver (111PC). This form is used to waive any rights to the Conservatorship proceedings that each individual wishes to relinquish.

#### 8. **NOTICE OF HEARING & HEARING**

Once all of the above documents are received, a hearing will be scheduled in the matter. Unless waived, a twenty (20) day notice of the hearing must be served upon all interested parties. The hearing notice will indicate the date, time, and location of the hearing. The court sends the notice of hearing to the parties. The right to receive notice twenty (20) days prior to the hearing can also be waived by completing Form 111PC. The hearing will provide the petitioner with the opportunity to present evidence on why a conservator is necessary, and who is the best individual to serve in that capacity. This is also an opportunity for opposing evidence to be presented. After all evidence has been heard, the judge will rule on the matter.

#### 9. **BOND/RESTRICTED ACCOUNT**

Before the appointment of a Conservator can be completed, a surety bond must be filed. If the proposed conservator is not bondable, that person may not be appointed by the Court. The bond must be in the amount of the total value of the incapacitated adult's personal assets (not real property) plus one year's estimated income. In addition, the Court may require a restricted account agreement. A Restricted Account Agreement is an agreement whereby a federally insured financial institution certifies that no assets may be withdrawn without an order from this court. The court will provide this form if it is required.

TOP TEN REASONS **NOT** TO FILE A PETITION  
FOR AN ADULT CONSERVATORSHIP  
IN THE COLLETON COUNTY PROBATE COURT

\*\*\*\*\*

1. The adult does not reside in Colleton County.
2. The adult does not own property in Colleton County.
3. The adult is not incapacitated as defined by statute [62-5-101 as amended].
4. A physician will not certify that the adult is incapacitated by affidavit [62-5-407 (b)].
5. The proposed conservator is not bondable.
6. The adult's only cash asset is a monthly Social Security check. (Payee changes can be made by contacting the local Social security Administration office.)
7. A Durable Power of Attorney is on file in the RMC Office (or exists in recordable form).
8. The adult's only asset, other than monthly Social Security checks, is real property; and no changes are proposed for the property at this time.
9. All cash assets are held in joint accounts.
10. Monies are being held in established trust for the adult.

## **OVERVIEW OF DUTIES OF A CONSERVATOR**

### **1. INVENTORY AND APPRAISEMENT**

Within thirty (30) days of the official court appointment of the Conservator, the Conservator must file an Inventory and Appraisal (550PC). Documentation showing that a Conservatorship account has been established must be filed with the Inventory and Appraisal (550PC).

### **2. REQUEST FOR EXPENDITURE (552PC)**

The Request for Expenditure is necessary when the Conservator wishes to withdraw money from the incapacitated person's account(s). The request must be filed with the Court, listing the specific items requested by the incapacitated 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 incapacitated person needs certain clothing items, then the Conservator must complete the Request for Expenditure, provide the filing fee, and provide documentation showing the cost involved. This documentation should be a quote directly from the place of purchase.

### **3. ANNUAL ACCOUNTING (562PC)**

One year after appointment, an interim accounting (562PC) is required showing all receipts and disbursements during that period of time. Thereafter accountings will be required on a yearly basis. All cancelled checks and bank statements must accompany the accounting 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. If assistance is needed, the court staff is available for questions.

### **4. CLOSING**

If the incapacitated adult becomes capable of handling his/her own affairs or dies, the Conservator must file a Petition for Discharge (571PC) and a final accounting (562PC) listing all remaining assets. The court will review these documents and then proceed in closing the file. At that time, a Termination of Appointment will be issued relieving the Conservator of his or her duties.

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

PROBATE COURT

IN THE MATTER OF \_\_\_\_\_

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

**RENUNCIATION OF RIGHT TO SERVE AS Conservator**

The undersigned hereby renounces his/her right to serve as Conservator of the above person, who is alleged to be incapacitated, and relinquishes any statutory right except as indicated below (you must check and fill out #1 **or** check #2; #3 is to indicate that you received the Summons & Petition) :

\_\_\_1. I hereby exercise my right to nominate a Conservator for the above-named person.  
The name and address of the proposed nominated Conservator is:

\_\_\_2. I hereby waive my right to nominate anyone as Conservator.

\_\_\_3. I will accept service of a copy of the Summons and Petition for appointment of a Conservator in this matter when they are served on me.

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

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

Name (Print): \_\_\_\_\_

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

Telephone (Work): \_\_\_\_\_

(Home): \_\_\_\_\_

(Cell): \_\_\_\_\_

Witnessed by:

\_\_\_\_\_  
(Must be someone who is not a party to the action)

# 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.

# **OBTAINING S. C. LAW ENFORCEMENT DIVISION (SLED) CRIMINAL RECORDS CHECK**

## **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:

Web (preferred):	<a href="http://www.sled.us.gov">www.sled.us.gov</a>
Mail (limited service):	South Carolina Law Enforcement Division P.O. Box 21398 Columbia, SC 29221-1398

## **INFORMATION NEEDED**

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

1. FULL name (including middle initial and suffixes as well as maiden and other names used)
2. Social Security Number (individual must agree to the use of their social security number for name search)
3. Date of Birth

## **COST**

There is a **\$25.00** fee per name, excluding maiden and alias names. If you obtain the criminal records check on-line, you pay by credit card. By mail, the payment must be in the form of a money order, cashier's check or certified check; **personal checks are not accepted.**

GUIDE FOR COMPLETING FORM 540GC (available  
at [www.sccourts.org/forms](http://www.sccourts.org/forms))  
(Petition for Appointment of Conservator)

Complete Caption on each form. A separate Petition must be completed for each individual in need of Conservatorship. The Case Number will be assigned by Probate Court.

The PETITIONER is the person petitioning for the appointment.

1. CAPTION: The Petitioner is the person seeking to have a Conservator appointed. The Respondents are the alleged incapacitated person (AIP) or Minor and the other family members of the AIP or minor.
  2. NATURE OF INTEREST OF UNDERSIGNED: Relationship of the Petitioner to the Minor or Alleged Incapacitated Person.
  3. INFORMATION - MINOR/INCAPACITATED PERSON: Complete all appropriate information.
  4. JURISDICTION AND VENUE: Check appropriate boxes.
  5. NAME & ADDRESS OF GUARDIAN: This relates to a Court-Appointed Guardian- - not a guardian *ad litem* or a natural parent.
  6. INFORMATION OF FAMILY: For "Minor": Complete information for Minor's parents, or if none, the nearest relatives. If either or both parents are deceased -- so indicate. If parents are separated or divorced or separated by Court Order -- a copy of the Custody Decree must accompany the Petition. For "Alleged Incapacitated Persons". Complete information of the spouse and any adult children, or if none, the nearest relative.
  7. GENERAL STATEMENT OF PROPERTY, ASSETS & INCOME: For "Minor". List all known assets coming into the hands of the Conservatorship -- insurance settlement proceeds, inheritance, etc. For, "Alleged Incapacitated Person": List all known assets of with estimated values - real estate, bank accounts, vehicles, monthly income, etc. (if monthly Social Security checks are payable to a Representative Payee for the Alleged Incapacitated Person, do not include the monthly checks.)
  8. REASON FOR APPOINTMENT OF CONSERVATOR: Complete information stating specific reasons justifying the appointment of a conservator.
  9. INFORMATION PROPOSED CONSERVATOR: Complete information and check appropriate square for petitioner's priority for appointment.
10. PERSONS REQUIRED BY STATUTE TO BE SERVED WITH SUMMONS & PETITION AND GIVEN NOTICE OF HEARING: Complete information. For "Minor": Parent not petitioning to be appointed Conservator; or if parents are deceased, the nearest relatives listed in Question #5, plus the minor. For AIP: spouse and adult children (or, if none, then nearest adult relatives), alleged incapacitated person and the Counsel/GAL. The Court may also require service on other persons.
11. VERIFICATION: Complete information, including the Petitioner's notarized signature.
  12. QUALIFICATION & STATEMENT OF ACCEPTANCE: If the appointment is uncontested, this Section may be completed prior to filing the Petition.

STATE OF SOUTH CAROLINA, )  
 )  
COUNTY OF COLLETON )  
 )  
IN THE MATTER OF THE )  
CONSERVATORSHIP FOR )  
(PROTECTED PERSON'S NAME) )  
 )  
(Petitioner's Name) )  
 )  
Petitioner(s), )  
 )  
vs. )  
 )  
(Protected person and other interested parties' )  
names) )  
Respondent(s). )  
\_\_\_\_\_ )

IN THE PROBATE COURT

SUMMONS

CASE NO. 20\_\_-GC-15-00\_\_

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the Petitioner listed above at the following address:

\_\_\_\_\_  
(Petitioner's information here)

(Name, PRINT)

\_\_\_\_\_  
(Street or Mailing address, PRINT)

\_\_\_\_\_  
(City, State, and Zip Code, PRINT)

Your Answer must be served on the Petitioner at the above address **within thirty (30) days** after service of the Summons and Petition on you, exclusive of the day of such service, and if you fail to answer the Petition, the Petitioner will ask the Court for a judgment by default for the relief demanded in the Petition.

\_\_\_\_\_, South Carolina

\_\_\_\_\_  
Signature of Petitioner/Attorney for Petitioner

Dated:

STATE OF SOUTH CAROLINA, )  
 )  
COUNTY OF COLLETON )  
 )  
IN THE MATTER OF THE )  
CONSERVATORSHIP FOR )  
\_\_\_\_\_)  
\_\_\_\_\_)  
 )  
Petitioner(s), )  
 )  
vs. )  
\_\_\_\_\_)  
\_\_\_\_\_)  
Respondent(s). )  
\_\_\_\_\_)

IN THE PROBATE COURT

SUMMONS

CASE NO. 20\_\_-GC-15-00\_\_

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the Petitioner listed above at the following address:

\_\_\_\_\_

(Name, PRINT)

\_\_\_\_\_

(Street or Mailing address, PRINT)

\_\_\_\_\_

(City, State, and Zip Code, PRINT)

Your Answer must be served on the Petitioner at the above address **within thirty (30) days** after service of the Summons and Petition on you, exclusive of the day of such service, and if you fail to answer the Petition, the Petitioner will ask the Court for a judgment by default for the relief demanded in the Petition.

\_\_\_\_\_, South Carolina

\_\_\_\_\_  
Signature of Petitioner/Attorney for Petitioner

Dated:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF: COLLETON )  
 )  
IN THE MATTER OF: \_\_\_\_\_

IN THE PROBATE COURT

CASE NUMBER: 20\_\_-GC-15-00\_\_\_\_

\_\_\_\_\_  
Petitioner

**PETITION FOR:**

**MINOR**  
 **ADULT**

vs.

\_\_\_\_\_  
Respondent(s)

**PROTECTIVE ORDER**  
 **APPOINTMENT OF CONSERVATOR**

\_\_\_\_\_  
\_\_\_\_\_  
Respondent(s)

Petitioner: \_\_\_\_\_

1. Give your relationship to the alleged incapacitated person, if any, and your interest in this proceeding.
2. Information – Minor/Allegedly Incapacitated Person

Name: \_\_\_\_\_ Age: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Last Four Digits of  
Social Security Number: XXX-XX-\_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone (Home): \_\_\_\_\_ (Office/other): \_\_\_\_\_

To my knowledge, the above-named  DOES  DOES NOT have a Will

To my knowledge, the above-named  DOES  DOES NOT have a Power of Attorney

3. Jurisdiction and Venue

South Carolina has jurisdiction over the allegedly incapacitated adult because:

- A.  South Carolina is the "Home State" because the allegedly incapacitated person has been physically present in South Carolina for the six month period immediately preceding the filing

of this petition or for at least six consecutive months ending within the six month period immediately preceding the filing of this petition; or

If the allegedly incapacitated person has not been physically present in South Carolina for that period, set forth on an additional sheet sufficient information on which the court may make a determination that it has initial jurisdiction pursuant to Section 62-5-707.

Special jurisdiction is appropriate, if South Carolina does not have jurisdiction pursuant to Sections 62-5-707(1) through (3), to:

(1) appoint a guardian in an emergency pursuant to this article for a term not exceeding ninety days for a respondent who is physically present in this State;

(2) issue a protective order with respect to real or tangible personal property located in this State; or

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued pursuant to procedures similar to Section 62-5-714.

B. Venue for this proceeding is proper in this county because the above minor/alleged incapacitated person:

resides in this county

does not reside in this county but has property in this county

4. The name and address of the above person's guardian, if any, is:

5. Information -- Family (list nearest relative first) of minor/alleged incapacitated person, including dates of birth of minors:

Name	Date of Birth	Address	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(use additional sheet if necessary)

6. The following is a general statement of the property, assets, and income of the above person, together with an estimate of the value thereof: (A full inventory, Form #550PC, shall be completed and filed with the Court within thirty days of appointment.)

Description	Value
_____	_____
_____	_____
_____	_____
_____	_____

7. The appointment of a conservator for the above person is necessary because (state reasons justifying appointment):

8. I request the appointment of:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
Telephone (H): \_\_\_\_\_  
Email: \_\_\_\_\_

whose priority for appointment as conservator for the above person is as follows:

- fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the minor/alleged incapacitated person resides
- individual or corporation nominated by the minor/alleged incapacitated person (if fourteen or more years of age and deemed mentally capable of making such a choice)
- attorney-in-fact appointed by protected person (Pursuant to S.C. Code Ann. Section 62-5-501)
- spouse of protected person
- adult child of protected person
- parent of protected person or person nominated by will of deceased parent
- other relative of protected person (specify): \_\_\_\_\_
- person nominated by the person who is caring for protected person or paying benefits to him/her
- ~~other (specify) one with priority to serve in his/her stead (specify): \_\_\_\_\_~~
- other (specify) \_\_\_\_\_

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper; that the Court appoint \_\_\_\_\_ as the conservator for the above minor/incapacitated person; and that Letters of Conservatorship be issued to the conservator.

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

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



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**VERIFICATION**

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

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

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

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

E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_

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

E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_

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**QUALIFICATION AND STATEMENT OF ACCEPTANCE**

I accept this appointment and agree to perform the duties and discharge the trust of the office of Conservator of the conservatorship of \_\_\_\_\_.

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

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

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

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

E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_

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

E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_