

OPENING ADULT CONSERVATORSHIPS

*Unless otherwise noted, all forms may be obtained on our website at
www.rcgov.us

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 Richland County or own real property in Richland 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 540PC)

A summons and a petition (540PC) 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 (533PC, 538PC & 541PC)

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. An Order appointing examiners must be filed listing the names of the two designated examiners (533PC). 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. Proper documentation for acquiring these reports can be obtained from the court or our website.

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. Other interested parties may include the nearest relative or relatives of the incapacitated person. Service is not required upon the petitioner. Proof of delivery (120PC) 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 or Restricted Account Agreement must be filed. 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. 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. The judge determines, at the hearing, whether a bond *and/or* restricted account will be required.

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 Appraisement (550PC). Documentation showing that a Conservatorship account has been established must be filed with the Inventory and Appraisement (550PC).

2. APPLICATION FOR EXPENDITURE (552PC)

The Application for Expenditure is necessary when the Conservator wishes to withdraw money from the incapacitated person's account(s). The application must be filed with the Court, along with a \$15.00 filing fee, 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 Application 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. Application for Expenditures is required for Conservator's with a restricted account or for purchases greater than \$500.00 from a bonded account.

3. ANNUAL ACCOUNTING (562PC)

Six months after appointment, an interim accounting (562PC) is required showing all receipts and disbursements during that period of time. The six-month accounting is required for the first year of appointment only. Thereafter, all accountings will be required on a yearly basis. Therefore, two (2) accountings are required during the first year of appointment, but, thereafter, must be filed annually for the life of the Conservatorship. 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.

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 (Form 550PC). Documentation showing that the Conservatorship account has been established must accompany the Inventory and Appraisal.

2. APPLICATION FOR EXPENDITURE (FORM 552PC)

The Application for Expenditure is necessary when the Conservator wishes to withdraw money from the minor's account(s). The request must be filed with the Court, along with a \$15.00 filing fee, listing the specific items requested for the minor, 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 minor needs a new computer, then the Conservator must complete the Application for Expenditure, provide the filing fee, and provide documentation showing how much the computer costs. This documentation should be a quote directly from the place where the item will be purchased from.

3. ANNUAL ACCOUNTING (FORM 562PC)

Six months after appointment, an interim accounting (Form 562PC) is required showing all receipts and disbursements during that period of time. Thereafter, all accountings will be required on a yearly basis. All cancelled checks and bank statements must accompany the accountings 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.

4. CLOSING

If the minor reaches the age of eighteen (18) or dies, the Conservator must file a Petition for Discharge (Form 571PC) and a final accounting (Form 562PC) listing all remaining assets. In the event that the minor has reached the age of eighteen (18), an Order for Release of Funds is then issued, which the minor and the Conservator must take to the financial institution(s) to close the Conservatorship account(s). The Receipt and Release is then signed by the minor and witnessed by a representative from the financial institution indicating that the minor has received his or her assets from said financial institution. The executed Receipt and Release must then be filed with the court to allow the Conservatorship to terminate. Therefore, the Conservator and the minor are responsible for ensuring that the court receives the document. The court will review the file and proceed to close the file. At that time, a Termination of Appointment will be issued relieving the Conservator of his or her duties.

HOW TO OBTAIN A SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED) CRIMINAL HISTORY REPORT

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:

Telephone Request: (803) 737-9000
Mail: South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, SC 29221-1398
Web: www.sled.us.gov

INFORMATION NEEDED

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

1. FULL name (including middle initial and suffixes as well as maiden and other names used)
2. Current mailing address
3. Current home phone number with area code
4. Social Security Number (individual must agree to the use of their social security number for name search)
5. Driver's License Number and the State where it was issued
6. Date of Birth

You must enclose a self-addressed stamped envelope with your request.

- **COST**

There is a **\$25.00** fee per name, excluding maiden and alias names. The payment must be in the form of a money order, cashier's check or certified check, **personal checks are not accepted.**

INFORMATION FOR SLED CHECK

Name _____

Address _____

Phone # _____

Social Security _____

Driver's License
(Please list state) _____

Date of Birth _____

By my signature, I acknowledge that the above information is required for a SLED background check and I am consenting to the use of the above information for purposes of a criminal background check for the Richland County Probate Court.

Signature

Date

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE COURT

IN THE MATTER OF: _____

CASE NUMBER: _____-GC-40-_____

**ACCEPTANCE OF SERVICE
AND
RENUNCIATION OF RIGHT TO SERVE AS CONSERVATOR**

PLEASE SIGN BELOW BEFORE A WITNESS AND DATE YOUR SIGNATURE.

_____ I accept service of a copy of the Summons and Petition in this matter. By selecting this statement I am agreeing that I have received a copy of the Summons and Petition.

PLEASE CHECK ONLY ONE OF THE TWO STATEMENTS BELOW:

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

_____ I hereby waive my right to nominate anyone as Conservator.

Executed this _____ day of _____, _____.

Signature: _____

Name (**Print**): _____

Address: _____

Telephone (Work): _____

(Home): _____

(Cell): _____

(Email): _____

Witnessed by:

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

EQUIFAX

Telephone: 1-800-997-2493

Mail: Equifax
P.O. Box 105851
Atlanta, GA 30348

Web: 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

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.

(SAMPLE)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
CONSERVATORSHIP)
FOR (The Protected Person))

IN THE PROBATE COURT
CASE NO.: 20__ GC40 _____

(Petitioner's Name is listed here))
Petitioner(s),)

vs.)

(Interested Parties to this action))
Respondent(s).)

SUMMONS

TO THE RESPONDENTS 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):

(This is the Petitioner (s) Name and address)

(Name, PRINT)

(Street address 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 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, the Petitioner(s) will ask the Court for a judgment by default for the relief demand in the Petition.

Signature of Petitioner(s)

Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
CASE NO.: 20__ GC40 _____

IN THE MATTER OF THE CONSERVATORSHIP
FOR _____)
)
_____)
_____)
Petitioner(s),)

SUMMONS

vs.)
)
_____)
_____)
Respondent(s).)
_____)

TO THE RESPONDENTS 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):

(Name, PRINT)

(Street address 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 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, the Petitioner(s) will ask the Court for a judgment by default for the relief demand in the Petition.

Signature of Petitioner(s)

Date

- 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 to Protected Person
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(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): _____

(H): _____

E-mail: _____

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 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
- nominated by 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: _____

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): _____

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): _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE COURT

**IN THE MATTER OF
CASE NUMBER**

DOCTOR'S AFFIDAVIT REGARDING CAPACITY

PERSONALLY APPEARED BEFORE ME _____
Name of Notary

who being duly sworn deposes and says:

I am (Please set forth your medical credentials):

Business address and phone: _____

Date and Place of this examination: _____

I have had previous opportunities to evaluate the patient? Yes No
(If yes, indicate dates and circumstances within the last year and/or reference if you have been the patient's personal physician for a period of time and the time frame.)

Is the patient oriented to time and place? Yes No

What is the physical condition and age of the patient? (Detail any other significant factors that may be relevant to the Court.)

Set forth the results of any tests which bear on the issue of incapacity and date of test:

BASED UPON MY EVALUATION OF THIS PATIENT:

I **DO NOT** believe this patient is an "incapacitated person".¹ I do not find any impairment by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person, property, or finances.

I **DO BELIEVE THIS PATIENT IS AN "INCAPACITATED PERSON"**¹ and in need of a Guardian and/or Conservator as I find him/her to be impaired by reason of (CHECK ALL THAT APPLY AND SET OUT AND DESCRIBE THE LIMITATIONS RESULTING FROM EACH.)

- Mental Illness
- Mental Deficiency
- Physical Illness or Disability
- Advanced Age
- Chronic Use of Drugs
- Chronic Intoxication
- Other

¹"Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. (Section 62-5-101 of the South Carolina Code of Law

Is this condition permanent or temporary?

Can Patient perform activities of daily living?

What other information do you believe would assist the Court in making a determination of capacity?

FURTHER AFFIANT SAYETH NOT.

Physician's Signature: _____

Print Name: _____

Examiner: _____
Credentials (M.D., Ph. D., D.O., R.N.)

Address: _____

Telephone: _____

SWORN to before me this _____
day of _____, _____

Notary Public for South Carolina
My Commission Expires: _____

**FAILURE TO PROVIDE DETAILED RESPONSES TO THE QUESTIONS ON THIS AFFIDAVIT MAY
OBLIGATE YOU TO APPEAR AT THE PROBATE COURT HEARING.**

All information **MUST** be typed or clearly printed.

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF RICHLAND

IN THE MATTER OF

CASE NUMBER

EXAMINER'S REPORT

Please answer the following questions concerning the above person. Please provide details at the end of this form or an attached sheet of paper.

1. Have you treated this person before
If yes, give brief history. Yes No Unknown

2. Has this person ever been rated or found:
disabled Yes No Unknown
mentally ill or incompetent Yes No Unknown
chemically dependent Yes No Unknown

3. Can the above person:
care for self (personal hygiene) Yes No Unknown
prepare meals and/or clean house Yes No Unknown
maintain bank accounts or funds Yes No Unknown
pay bills Yes No Unknown
live independently Yes No Unknown
operate a car Yes No Unknown
take medications unsupervised Yes No Unknown

4. Would the above person benefit from:
further education Yes No Unknown
further training Yes No Unknown
therapy of some sort Yes No Unknown
medical aids or equipment Yes No Unknown
an operation or medical procedure(s) Yes No Unknown
structured living arrangements Yes No Unknown

5. Has the above person had in the last six months:
hospitalization(s) Yes No Unknown
therapy or treatment Yes No Unknown
inpatient or outpatient surgery Yes No Unknown
major medical test(s) Yes No Unknown
psychological or psychiatric testing Yes No Unknown

6. In your opinion, does this person have the mental or physical capacity to effectively manage his/her
property and financial affairs Yes No Unknown

and/or make necessary daily living and health care Yes No Unknown

7. To your knowledge, does this person have:
a power of attorney Yes No Unknown
a health care power of attorney or
a "living will" Yes No Unknown

8. Does the above person have any of the following coverages?

health insurance

Yes No Unknown

medicare

Yes No Unknown

medicaid

Yes No Unknown

veteran's health care

Yes No Unknown

9. Does this person have a primary caretaker?

Yes No Unknown

If yes, please give available information on name, address, and relationship to above person.

SWORN to before me this _____ day of

Date: _____

_____, 20_____

Examiner's Signature

Notary Public for South Carolina

Examiner's Name

My Commission Expires: _____

Use this space for explanations or additional comments.