

**INSTRUCTION SHEET FOR FORM #530GC  
PETITION FOR FINDING OF INCAPACITY, APPOINTMENT OF GUARDIAN,  
APPOINTMENT OF SUCCESSOR GUARDIAN**

Payment of the filing fee or filing of a *Motion and Affidavit to Proceed In Forma Pauperis* (see Form SCCA405PC) is required when this petition is filed. The petition is intended to be used when a petitioner is seeking the appointment of a Guardian for an alleged incapacitated individual (A.I.I.). It can also be used when a petitioner seeks to have a Successor Guardian appointed for an incapacitated individual. 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 the appointment of a Guardian. This is determined by the Court based upon 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 make decisions regarding health care, medical treatment, medical decisions, or appropriate placement for the A.I.I., please read below for situations in which a guardianship may be needed and check the appropriate box(es) in the Petition:**

- **APPOINTMENT OF GUARDIAN (including appointment on an EMERGENCY or TEMPORARY basis; see Forms #512GC and #513GC)** - Can be used to request appointment of an individual, including a professional Guardian, on an emergency, temporary, and/or permanent basis to be the substitute health care decision-maker for an alleged incapacitated individual.
- **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 discretion of the Court to determine whether a testamentary Guardian designation in a will executed by 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 Probate Code or under the processes and procedures enacted by the 2017 amendments. *(See §62-5-301 of the 1987 Probate Code versus the changes to §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) requires that the petitioner must indicate in the petition what rights the Court is being asked to remove from the A.I.I. For guardianships those rights are stated in S.C. Code Ann. § 62-5-304A. 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 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).**