§ 1402. Who may propound will; contents of petition; direction of court

1. Who may petition. A petition for the probate of a will may be presented by

(a) any person designated in the will as legatee, devisee, fiduciary or guardian or by the guardian of an infant legatee or devisee or the committee of an incompetent legatee or devisee, or the conservator of a legatee or devisee who has been designated a conservatee pursuant to article seventy-seven of the mental hygiene law;

(b) a creditor or any person interested or any person entitled to letters of administration with the will annexed under 1418;

(c) any party to an action brought or about to be brought in which action the decedent, if living, would be a party;

(d) the Public Administrator or County Treasurer on order of the court, where a will has been filed in the court and proceedings for its probate have not been instituted or diligently prosecuted.

2. Contents of petition. The petition for probate shall allege the citizenship of the petitioner and the testator and shall describe the will being offered for probate and any other will of the same testator on file in the court and shall set forth the names and post-office addresses so far as they can be ascertained with due diligence of all of the persons required to be cited and all of the legatees, devisees and fiduciaries named in the will or any other will so filed.

3. Direction of court.

(a) Where a petition for probate has been filed and the proceeding has not been diligently prosecuted the court may direct the Public Administrator or County Treasurer or authorize any party to take such steps as may be required to bring the proceeding to a decree.

(b) Where necessary, the court shall determine the text or tenor of the will as admitted to probate and may incorporate the will or any part thereof in the decree.