§ 1418. Letters of administration with will annexed; when and to whom granted

1. If no person is named as executor in the will or selected by virtue of a power contained therein or if at any time there is no executor or administrator with will annexed qualified to act, upon the application of any person who may petition for the probate of the will under 1402 the court must issue letters of administration with will annexed in the following order of priority:

(a) to a sole beneficiary or if he be dead to his fiduciary;

(b) to one or more of the residuary beneficiaries or, if any be dead, to his fiduciary;

(c) if there is no eligible person entitled to letters under subparagraphs (a) and (b) of this subdivision who will accept, the court may issue letters to one or more of the persons interested in the estate or, if any be dead, to his fiduciary.

2. If there is no eligible person entitled to letters under the foregoing subdivision who will accept or an appointment is not made by consent as provided in subdivision 6, letters shall issue to the public administrator or, if there be none for the county, to the treasurer of the county.

3. If none of the persons mentioned in subdivisions 1 and 2 will accept letters the court may issue them to the petitioner or upon petitioner's refusal to accept the same to any person designated by the court.

4. A corporation incorporated within the territorial limits of the United States which is a sole or residuary legatee may act as administrator with will annexed although not specifically so authorized by its charter or by any provision of law.

5. If any person otherwise entitled to letters under subdivision 1 is an infant, incompetent or conservatee the court may issue letters with will annexed to the guardian of the property of the infant, the committee of the property of the incompetent, or the conservator of the

property of the conservatee with the same priority as if the infant, incompetent or conservatee had himself been eligible to take letters.

6. Administration may be granted to an eligible person or persons not entitled as beneficiaries upon the acknowledged and filed consent of all of the eligible beneficiaries, or if there are no eligible beneficiaries, then on the consent of all of the beneficiaries, except that the guardian of the property of an infant beneficiary, the committee of the property of an incompetent beneficiary or the conservator of the property of a conservatee beneficiary appointed within the state of New York, may so consent on behalf of his or her ward. For purposes of this subdivision, a beneficiary is eligible if letters of administration with will annexed could be issued to him or her alone or acting together with the person or persons or so nominated.

7. Administration may be granted to a trust company or other corporation authorized to act as fiduciary upon the acknowledged and filed consents of all the eligible beneficiaries, or if there are no eligible beneficiaries, then on the consent of all beneficiaries, except that the guardian of the property of an infant beneficiary, the committee of the property of an incompetent beneficiary, or the conservator of the property of a conservatee beneficiary appointed within the state of New York, may so consent on behalf of his or her ward. For purposes of this subdivision, a beneficiary is eligible if letters of administration with will annexed could be issued to him or her alone or acting together with the trust company or other corporation so nominated.

8. The court may refuse to issue letters of administration with will annexed where distribution of the estate is possible pursuant to the provisions of this act.