§ 1421. Election by surviving spouse

1. Any person interested in obtaining a determination as to the validity or effect of an election to take a share under EPTL 5-1.1 or EPTL 5-1.1-A may present to the court in which the will was probated or from which letters of administration were issued, a petition showing his interest, the names and post-office addresses of the other persons interested and the particular question concerning which he requests the determination of the court.

2. If the application be entertained process shall issue to all persons interested in the question to be presented to show cause why the determination should not be made. On the return of process the court may take proof and shall make such decree as justice requires.

3. The validity or effect of any such election may also be determined in a proceeding for the judicial settlement of the accounts of a fiduciary.

4. For the purpose of determining the validity or effect of any election made pursuant to EPTL 5-1.1 or EPTL 5-1.1-A, either under this section or in a proceeding for the judicial settlement of the accounts of the fiduciary, a person interested shall include any person who has an interest in any of the transactions described in EPTL 5-1.1 or EPTL 5-1.1-A. Where any such person has an interest as trustee of an express trust it shall be sufficient to name and serve the trustee.

5. Whenever it shall appear that a fund or property required to be included in the net estate under EPTL 5-1.1 or EPTL 5-1.1-A has not come into the possession of the fiduciary of the decedent as such, the court shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise.