§ 2225. Determination of distributees, devisees, legatees, beneficiaries and distributive and beneficial shares

In any proceeding where the court is required to determine the distributees entitled to share in the estate under EPTL 4-1.1, or where a devisee, legatee or a beneficiary of a will or trust subject to the jurisdiction of the court is entitled to money or property upon the occurrence of a specified event, the petition may request the court as incidental thereto to adjudge that (a) a person who might otherwise be a distributee, devisee, legatee or beneficiary is dead or (b) that no distributees, devisees, legatees or beneficiaries other than those stated in the record exists. Citation shall issue to the person named and to unknown distributees or to unknown devisees, legatees or beneficiaries, if any. For the purposes of this section, a "specified event" shall be the time specified in the will or lifetime trust for the determination of the identity of the devisee, legatee, beneficiary or members of a class thereof entitled to share in the estate or trust property.

(a) If it is established to the satisfaction of the court that a person who would be a distributee, or a devisee, legatee or beneficiary upon the occurrence of a specified event, has not been heard from for a period of at least three years since the death of the decedent, or since the occurrence of such event, as the case may be, that a diligent search has been made to discover evidence that such person is still living, and that no such evidence has been found, the court may make a determination that such person is presumed dead and that he or she predeceased the decedent without issue or that such devisee, legatee or beneficiary is presumed to have died prior to the occurrence of such event and that such person died prior thereto without issue other than those issues stated in the record.

(b) If it appears to the satisfaction of the court that diligent and exhaustive efforts have been made from all available sources to ascertain the existence of distributees, or members of a class of devisees, legatees or beneficiaries, that at least three years have elapsed since the death of the decedent, or since the occurrence of the specified event upon which such class is finally determined, as the case may be, that the parties before the court know of no distributees of the

decedent, or of such legatees, devisees or beneficiaries, other than those stated in the record, and that no claim to a share in the estate or trust has been made by any person whose relationship or existence has not been established in the record, the court may make a determination that no distributee of the decedent or class of distributees exists, or that no such devisee, legatee or beneficiary, or members of a class of legatees, devisees or beneficiaries exists, other than those whose status is established in the record before the court.

(c) Upon making the findings under subdivision (a) or (b) of this section, the court may direct distribution of the assets to those distributees or to those devisees, legatees and beneficiaries whose relationship or present existence has been established in the record before the court.