

Description

The following is a dramatization of an actual title insurance claim involving an omitted heir. This type of claim is often completely invisible in the land records and is precisely the type of hidden risk that title insurance is designed to address. The names and locations in this claims chronicle have been changed.

Ben Donaldson had to finally admit it. He was happy. Genuinely happy, possibly for the first time in his life. He watched his two kids and his wife Erin splash in the waves on Sunset Beach. The sun was just about to touch down onto the Atlantic Ocean. Another summer day was coming to an end. He turned and looked at his house just 100 yards behind him. A short walk back to the outdoor shower and then time to fire up the grill. Twelve years ago today his father had died suddenly of a heart attack while working on their family farm in Augusta County. His father had been a young man, and the family had no savings and there was no life insurance policy. He and his twin brother Aaron had done the best they could to take over the farm and make ends meet, but it was a losing battle. They had lost hope and were staring in the face of foreclosure when their uncle, a property developer in Texas, had called with an idea that would change everything.

That idea spawned Donaldson Acres, a 110 Lot subdivision with a commercial shopping center that even had a Starbucks. Although watching their 60-acre family farm disappear was upsetting, the revenue the project generated for the brothers and their mother was life changing. They went from not being able to pay the electric bill to being able to afford beach houses in North Carolina and funding a college education for all their children.

Yet every time Ben allowed himself to feel content, a sensation of angst crept up inside him. He sat down on his deck after dinner with a bourbon in hand and listened to the waves roll up on the beach below. His cell phone buzzed in his pocket. A Texas area code from a number he did not recognize. Ben answered, "Hello?" As soon as he heard the woman's voice his chest tightened.

“Hi, I’m looking for Ben Donaldson. This is Sarah Spiner.”

â??This is Ben. Wait Sarah Spiner? From my uncleâ??s neighborhood?â?•

â??Yes Ben, thatâ??s me. Iâ??m so sorry to spring this on you, but I really need to talk. Can we meet somewhere?â??•

• Sarah, I'm in North Carolina now, I won't be back in Richmond for a few weeks.

â??I know Ben. Iâ??m so sorry, but I am just up the road at a hotel. Your uncle told me where you were. I need to talk to you about your father. Can we please meet?â?•

Ben had remembered Sarah from when he and his brother went to visit his uncle in Texas as children. They had spent a few summers there with their uncle. Their father would often tag along. Ben had always felt a strange connection to Sarah, and they had become quite close, writing letters to each other during the school year. But as an adult he had lost touch with her. Now to hear her voice and have her mention his father sent a flood of emotion through his body. Ben said he would be happy to meet Sarah and hung up. During the short drive to their meeting Ben felt he knew exactly what Sarah was going to tell him.

The next day Ben told his wife he needed to drive up to Richmond to meet with their attorney. He did not tell her why, he just said it had something to do with their development company and it could not wait.

Mark McCann did not show any reaction to Ben's story. He had heard a lot in his 40 years practicing law and one of the reasons for his success was his composure in difficult conversations with clients. When Ben finished his explanation of events, Mark had never seen his client look so pale.

"Ben, assuming Sarah is correct and she is in fact your father's daughter, then yes, she is an heir at law. Your father died intestate, which means he had no will. All heirs at law in Virginia become owners of a decedent's property upon his death. There is no deed that is required. Even if a list of heirs is filed, that document does not conclusively dictate who the owners of the property actually are.

So that means when you, your mother and your brother transferred the family's land to an LLC 10 years ago and then developed the land and sold those 110 Lots to individual owners and then the 10 acre parcel to the commercial developer, all of those conveyances were possibly defective because they lacked Sarah's signature. Again, assuming this is true and based on what you told me, you believe it is true then yes, this is a big problem."

Ben was white as a sheet, and Mark was afraid he might get sick on his new carpet. He poured a glass of water from the decanter resting on Mark's side table.

"Ben we can take a break if you like. I need to make some calls. I know the attorney Sarah has hired and she is solid. She would not take this case and file suit unless she knew she had the goods."

The drive from Mark's office to the beach house was just over four hours. Plenty of time to think this all through. He would need to explain this to Erin and his kids. How would he tell them his grandfather had another family? The kids had an aunt they did not know? He was dreading that conversation.

Ben did not resent Sarah for doing this. Sarah had been dealt a difficult hand in life. Sarah's mother had died when Sarah was in her twenties. Her mother had told Sarah her father had left her when Sarah was just an infant to work on an oil rig in California. Sarah's mother was a waitress at a local restaurant for as long as Sarah could remember. They lived in a house they inherited from her grandparents. A modest two-bedroom ranch in the same town in Texas as Ben's uncle.

Sarah had her son when she was twenty-two. The son, Tommy, had autism and needed a lot of care that Sarah could not afford on her salary as a bookkeeper for a local auto dealership. The boy's father had left shortly after his birth.

It was about a year ago that Sarah's best friend Stacie had bought her a consumer genetic testing kit for her birthday. Sarah had seen commercials for these kits and had always been curious about her

ancestry having known nothing about her father's side of the family. When the results came back she was puzzled. At first she did not understand what she was reading, thinking that there was a mistake. Then suddenly it had made sense to her, as if she had known this all along. Stephen Donaldson was a close relative. Which meant that she was also related to Ben and Aaron Donaldson. Memories of summer evenings when she was a child played in her head. Mr. Donaldson sitting on her sofa at her house watching Dallas on television with her mother.

Charity Barksdale was born to be a litigator. Her mother said it when she was five years old. Her teachers said it all the way through her public school education in Williamsburg and her professors knew it early on at Richmond School of Law. Now after practicing for fifteen years, she had never lost a case, and she did not intend to lose this one for Sarah Spiner. This woman needed a win in her life and Charity was going to deliver it. She called down the hall to John who was diligently preparing the notices for all the Lot owners in Donaldson Acres who would receive a copy of Charity's Complaint on Monday. "John, I want these to go out ASAP even if it means we are here all weekend."

John had already anticipated this and had cancelled his plans with his girlfriend for Sunday. He didn't really want to go apple picking anyway.

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Marcella and Danny Rodriguiz were finally homeowners. They had been married for four years, and Marcella was expecting their first child. The one-bedroom apartment in Harrisonburg was not going to cut it. They wanted a house with a yard so that their kids (Danny wanted more than one) would have a safe place to play. When they first saw the grey house in Donaldson Acres, they knew they had found their home. The neighborhood even had a Starbucks. Marcella's aunt was their realtor, and she remembers asking her aunt if they should waive the owner's title insurance policy. Marcella heard that this would save them a little money and they were really stretching to come up with the funds to close. She remembers her aunt saying, "Sweetheart, I cannot in good conscience tell you that is ok. I would feel so much better if you bought the policy."

So, when Marcella opened the mail from a Richmond law office and saw the word "Complaint", she picked up the phone and called her aunt. Her aunt told her to "Go find that file you brought home from the closing and take a picture of the policy and send it to me. I will make a few calls and get back to you. And most important of all, don't panic. This is what that policy is intended for."

"John, I want these to go out ASAP even if it means we are here all weekend."

This was trial by fire for Jessica PIPPS. She had landed her dream job in the claims department of a national title insurance underwriter and had been working for only two weeks. When she arrived to work on week three, everything was going haywire. Virginia was part of her territory and by lunchtime on Tuesday, she had over forty claims on her desk from just one neighborhood in Virginia. She asked her manager what to do next, and he told her that they would need to hire local counsel for this one. Jessica pulled up her list of local counsel she had saved and then pulled out her phone.

"Hello Jessica, yes this is something we can definitely handle for you. We have dealt with omitted heir cases many times before. Just start sending over the documentation you have received so far and we will open files. Over forty and counting? Ok, I will be on the lookout. We look forward to working with you on this Jessica."

Oliver Warren of Warren and Simpkins was smiling when he hung up the phone. The firm's billing had been slow over the summer, and he had started to worry, but not any longer. This was going to be a great third quarter after all.

That afternoon Oliver reviewed the Complaint that Charity Barksdale had prepared. It named all existing residential lot owners in Donaldson Acres, the owners of the commercial Lots, the tenants, Ben Donaldson and his brother Aaron, and multiple lenders with deeds of trust secured by these various lots. The exposure was quite large. The plaintiff claimed an interest in the original farmland which was then rezoned, subdivided and sold off to over a hundred different parties. The claims administrator had hinted that based on her conversations with Donaldson's counsel, there was a good chance that the plaintiff was in fact an omitted heir. The plaintiff not only had DNA evidence, but she had uncovered some letters from Stephen Donaldson written to the plaintiff's mother and also evidence of payments to her mother as well.

Oliver knew of course that he would need to do his own investigation which would include a DNA expert, probate historian and possibly others. But if his investigation led to the same conclusion, a settlement with this plaintiff would be the best course of action. Between his legal fees, the costs of experts and the ultimate settlement, this was going to get expensive for the title insurer. Oliver also knew there were several Lot owners who did not purchase a title insurance policy. They would most likely have to hire their own counsel and come out of pocket for the legal fees and possibly the settlement.

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Sarah Spiner sat in Charity Barksdale's office in Richmond signing paperwork. There was a lot of it and her hand was cramping. Charity looked over at Sarah from across her conference table. The settlement had finally concluded after several months, and she was pleased with the results for her client. Sarah would walk away with over \$5 million dollars. She would no longer need to worry about how to pay for her son's treatment or pay her rent. The interesting part of this was that Sarah would never have received this money had she not by chance taken the genetic test. And Ben and Aaron would never have known they had a sister. Nothing in the land records had led anyone to know there was an omitted heir. It was a hidden risk. Sarah looked up at Charity with a smile on her face. âJust one more!â

Charity loved her job.



Kristopher Ryan Sleeth (Kris) currently serves agents in Virginia, Maryland, and the District of Columbia, as FNF Mid-Atlantic Agency Underwriting Counsel.

Before first joining the FNF Family in March of 2006 as Underwriting Counsel, Kris was in the private practice of law in the metropolitan DC area. From 2006 through 2013 Kris served as Agency Counsel for the FNF brands in MD, DC, and VA, later serving as Virginia Underwriting Counsel for First American Title Insurance Company through 2021. Most recently Kris was Regional Underwriting Counsel in the Mid-Atlantic region for WFG National Title Insurance Company.

He attended The George Washington University from 1990-1994 and received his J.D. from George Mason University School of Law in 1999. He currently resides in Arlington Virginia with his wife and three children.

Category

1. Claims
2. Featured

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Author

vltaexaminer