



Presents:



1499 West Palmetto Park Rd, Suite 412, Boca Raton, FL 33486,

Telephone: (561) 750-3456, Facsimile: (561) 750-8185

Web: www.Gerstin.com

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Homeowner Associations

Association Administration

720.303

- Open Meetings. Homeowners' association directors' and committee meetings do not have to be open to members if discussing pending or proposed litigation with counsel or personnel matters.
- Compensation. Association officers, directors and committee members may not receive, directly or indirectly, any compensation for service except the same for benefits enjoyed community wide or authorized in advance by a majority of the members.

Reserves

720.303

(b) In addition to annual operating expenses, *the budget may include reserve accounts* for capital expenditures and deferred maintenance for which the association is responsible to the extent that the governing documents do not limit increases in assessments, including reserves. ***If the budget of the association includes reserve accounts, such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts in the budget, the association shall thereafter determine, maintain, and waive reserves in compliance with this subsection.***

This includes existing reserves.

(c) If the budget of the association does not provide for reserve accounts governed by this subsection and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required by subsection (7) shall contain the following statement in conspicuous type: THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO

THE PROVISIONS OF SECTION [720.303\(6\)](#), FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.

- **Establishing Reserves**

(d) An association shall be deemed to have provided for reserve accounts when reserve accounts have been initially established by the developer or when the membership of the association affirmatively elects to provide for reserves. If reserve accounts are not initially provided for by the developer, the membership of the association may elect to do so upon the affirmative approval of not less than a majority of the total voting interests of the association. Such approval may be attained by vote of the members at a duly called meeting of the membership or upon a written consent executed by not less than a majority of the total voting interests in the community. The approval action of the membership shall state that reserve accounts shall be provided for in the budget and designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall provide for the required reserve accounts for inclusion in the budget in the next fiscal year following the approval and in each year thereafter. Once established as provided in this subsection, the reserve accounts shall be funded or maintained or shall have their funding waived in the manner provided in paragraph (f).

(e) The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item.

Only accountants or similar professionals (reserve studies, risk, etc.) should perform these tasks.

(f) Once a reserve account or reserve accounts are established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not present, the reserves as included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this subsection to waive or reduce reserves shall be applicable only to one budget year.

(g) Funding formulas for reserves authorized by this section shall be based on either a separate analysis of each of the required assets or a pooled analysis of two or more of the

required assets.

1. If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account shall be the sum of the following two calculations:
 - a. The total amount necessary, if any, to bring a negative component balance to zero.
 - b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component.

The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may include factors such as inflation and earnings on invested funds.

2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall not be less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

• **Maintaining the reserve account:**

(h) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present. Prior to turnover of control of an association by a developer to parcel owners, the developer-controlled association shall not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.

Collections, Liens and Bank Foreclosures

§720.3085. Owners remaining in possession after a foreclosure judgment may be required to pay rent and an association is entitled to purchase a foreclosed parcel.

The liability of a first mortgagee, or its successor or assign as a subsequent holder of the first mortgage, for homeowners' association assessments coming due before the mortgagee's acquisition of title is *limited to the lesser of twelve months of regular and special assessments or 1% of the original mortgage debt.*

A homeowners' association may record a claim of lien forty-five days after depositing a notice in the mail to the owner. Qualifying offer procedures are clarified.

Homeowner Association Flags

§720.304(2) (a). Flags. The types of flags that may be displayed in a homeowners' association community are expanded to include POW-MIA flags. Two flags may be flown on a parcel, one United States flag or official flag of the State of Florida and one for the armed forces or POW-MIA. A parcel owner may utilize a free standing flag pole no more than twenty feet high anywhere not interfering with intersection sight lines or easements.

CONDOMINIUMS

Before 2008 Changes

After 2008 Changes

Director Voting

718.111(1)(b). Allowed abstentions for conflicts of interest. Nothing stated about the meaning of an abstention

718.111(1)(b). A director who abstains from voting on any action taken on any corporate matter is presumed to have taken no position regarding the action.

Standard of Conduct for Directors

**718.111(1)(d).
No prior statutory provision.**

718.111(1)(d). Officers, agents, and members of the board of directors of a condominium association are required to adhere to a good faith and reasonably prudent person standard and provides for monetary damages and criminal penalties for breach of this standard.

Transactions from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Official Records

**718.111(12)(11).
No prior statutory provision.**

718.111(12)(11). Fines can be levied against individuals up to \$5,000 for intentionally or knowingly defacing a condominium accounting record or failing to create or maintain such a record.

**718.111(16)(b).
No geographic limitations and no option to produce the records electronically.**

718.111(16)(b). Official records of the condo association must be maintained for a period of seven years. The required inspection report is also now part of the official accounting records. Records must be within 45 miles from the condo complex or in the same

Avoid the pitfalls and fines due to improper record production, post your governing documents on your association's website and make them downloadable and printable.

county as the condo complex.

Providing the records through the internet by posting on the web, if the documents can be downloaded and printed is a permissible alternative to document inspection at an office of the condominium or property manager.

718.111(12)(16)(4).

No prior statutory provision.

718.111(12)(16)(4). The Social Security numbers, driver's license and other personal identifying information of members' are not accessible to unit owners.

718. 111(13).

No prior statutory provision.

718. 111(13) The Division has been empowered to, but has yet, implemented rules regarding uniform accounting principles and standards for stating the disclosure of at least a summary of the reserves, including information as to whether such reserves are being funded at a level sufficient to prevent the need for a special assessment and, if not, the amount of assessments necessary to bring the reserves up to the level necessary to avoid a special assessment. The person preparing the financial reports shall be entitled to rely on an inspection report prepared for or provided to the association to meet the fiscal and fiduciary standards of this chapter.

Elections & Qualifications to Serve

718.112(2)(b)(2). 718.112(2)(b)(2).

No prior statutory provision.

Association owned units do not have voting rights or any consent allocated to them.

Before

After

718.112(2)(d).

718.112(2)(d).

Previously only had a disqualification for felons wanting to serve on a condominium Board.

Precludes members from serving as a director if the member is delinquent on the payment of his/her assessments, if they were suspended or removed by the Division in the past, co-owners in an association with more than ten units may not serve on the Board at the same time.

718.113(7).

718.113(7).

No prior statutory provision.

Regardless of restrictions in an association’s *Governing Documents*, unit owners are allowed to display religious decorations not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep.

718.112(2)(d)(1).

718.112(2)(d)(1).

Board member terms expired at the election of their successors at the annual meeting.

The terms of all board members expire at the annual meeting and if not precluded by the *Bylaws* these members can stand for reelection.

718.112(2)(d)(1).

718.112(2)(d)(1).

No prior statutory provision.

Board members can only be elected to annual (1-year) terms, coinciding with the annual meeting, or to no more than 2-year staggered terms, if authorized by the association’s *Governing Documents*.

Recommendation from the Division.

“If your association documents already provide for 2-year staggered terms, we recommend that your association reaffirm this by a new vote with approval from a majority of the voting interests in order to continue using two year staggered terms.”

“If the association wants to adopt 2-year staggered terms as a new provision or your current association documents provide for staggered terms of 3 years or more, you must amend your documents accordingly. Staggered terms of 3 or more years are no longer allowed.”

*Condominium
Elections Continued.*

For upcoming elections, board members who are not up for election because they are in mid-term of a 3 year term may serve out the remainder of their term. If a board member's 3 year term expires at the next (upcoming) election the newly elected member is limited to either a 1-year or 2-year staggered term depending on how your documents are amended and approved by a majority of the voting interests. This process will repeat itself in subsequent annual elections until all board members are serving either 1-year or 2-year staggered terms.

Board Candidates

718.112(2)(d)(1).

No prior statutory provision.

718.112(2)(d)(1).

If no one is interested in or demonstrates an intention to run for the position of a board member whose term has expired, such board member whose term has expired shall be automatically reappointed to the board of administration and need not stand for reelection.

718.112(2)(d)(3).

No prior statutory provision.

718.112(2)(d)(3).

Establishes a certification form, to be provided with the election notice to unit owner entitled to vote, for candidates for condominium association boards attesting that the candidate has read and understands, to the best of his/her ability, the governing documents of the association and the provisions of Chapter 718 and any applicable rules.

**Candidate Certification
form at Division website.**

718.112(2)(m).

No prior statutory provision.

718.112(2)(m).

A director or officer more than 90 days delinquent in the payment of regular assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

718.112(2)(n). Officers and directors who are charged with a felony theft or embezzlement offense shall be removed from office and cannot be appointed or elected as director or officer. Should the charges be resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of the term of office.

Reserves

718.112(2)(F)(3).

Waiving or reducing the funding of reserves below the statutory requirements can be performed by the majority votes of the owners.

718.112(2)(F)(3). Proxy voting relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended shall contain the following statement in capitalized, bold letters in a font size larger than any other

used on the face of the proxy ballot: **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE RESERVE ITEMS.**



Mandatory Inspections

718.113(6).

No prior statutory provision.

718.113(6).

As to any condominium building greater than three stories in height, at least every 5 years, and within 5 years if not available for inspection on October 1, 2008, the board shall have the condominium building inspected to provide a report under seal of an architect or engineer authorized to practice in this state attesting to required maintenance, useful life, and replacement costs of the common elements. However, if approved by a majority of the voting interests present at a properly called meeting of the association, an association may waive this requirement. Such meeting and approval must occur prior to the end of the 5-year period and is effective only for that 5-year period.

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Hurricane Shutters

**718.113(5) and
718.115(1)(e)**

No prior statutory provision.

718.113(5) and 718.115(1)(e) Provides that Board can install hurricane protection that complies with or exceeds applicable building codes (in addition to hurricane shutters). A vote of the owners is not required if the hurricane protection to be installed is the maintenance, repair, and replacement responsibility of the association. The cost to install the hurricane protection is a common expense if the hurricane protection to be installed is the maintenance, repair, or replacement responsibility of the association. In such case, owners who have previously installed code compliant hurricane protection will receive a credit on the assessment.

Liens & Collections

718.115(1)(e)

**No prior statutory
provision.**

718.115(1)(e). No lien may be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last known address as reflected in the records of the association.



Emergency Powers

718.1265. To the extent allowed by law and unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with the provisions of s. 617.0830, the board of administration.

In response to damage caused by an event for which a state of emergency is declared in the locale in which the condominium is located, may, but is not required to, exercise the following powers:

(a) Conduct board meetings and membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on the condominium property or any other means the board deems reasonable under the circumstances. Notice of

board decisions may be communicated as provided in this paragraph.

- (b) Cancel and reschedule any association meeting.
- (c) Name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the association.
- (d) Relocate the association's principal office or designate alternative principal offices.
- (e) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.
- (f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners.
- (g) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the condominium property unavailable for entry or occupancy by unit
- (h) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.
- (i) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.
- (j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law

to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of any unit owner or owners, for items or services for which the owners are otherwise individually responsible for, but which are necessary to prevent further damage to the condominium property. In such event, the unit owner or owners on whose behalf the board has contracted are responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 718.116 to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding of broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property.

(l) Regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage and make emergency repairs.

Developer Transition

718.301 (1)(p).

No prior statutory provision.

718.301 (1)(p).

Prior to transition the developer must obtain a report under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of the following applicable common elements comprising a turnover inspection report:

1. Roof.
2. Structure.
3. Fireproofing and fire protection systems.

4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.
12. Painting.
13. Irrigation systems.

The Division's Role in a Transition

718.501(1). In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with the provisions of this chapter with respect to associations that are still under developer control and complaints against developers involving improper turnover or failure to turnover. However, after turnover has occurred, the division shall only have jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records.



Management Companies

Contracts and Bidding

718.3026 . Associations with 10 or fewer units may opt out of the provisions of the bidding requirements (former threshold was 100 or fewer units) if two-thirds of the unit owners vote to do so. Can be a vote by proxy

718.3026 (1) All contracts as further described herein or any contract that is not to be fully performed within 1 year after the making thereof, for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter, and all contracts for the provision of services, shall be in writing.

If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association on behalf of any condominium operated by the association in the aggregate that exceeds 5 percent of the total annual budget of the association, including reserves, the association shall obtain competitive bids for the materials, equipment, or services.

Nothing contained herein shall be construed to require the association to accept the lowest bid.

Contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are not subject to these provisions.



Conflicts of Interest.

718.3026(3).

No prior statutory provision.

718.3026(3).

As to any contract or other transaction between an association and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested:

- (a) The association shall comply with the requirements of s. 617.0832.
- (b) The disclosures required by s. 617.0832 shall be entered into the written minutes of the meeting.
- (c) Approval of the contract or other transaction shall require an affirmative vote of two-thirds of the directors present.
- (d) At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. Should the members cancel the contract, the association shall only be liable for the reasonable value of goods and services provided up to the time of cancellation and shall not be liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Fines

718.303 (3).

No prior statutory provision.

718.303 (3).

Defines the membership of the committee of unit owners that conduct the hearing to determine whether a unit owner is fined for violation of association rules or bylaws to exclude board members or persons residing in a board member's household.

Insurance

Based on the following new insurance laws, associations should now do the following:

- (1) Obtain an insurance appraisal every 36 months.
- (2) Vote on the deductible yearly at a properly noticed board meeting. The notice must state: the proposed deductible and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit. Requires 14 days notice by mail to the unit owners.

**The new law rewrites Section 718.111(11), Florida Statutes.
Following is a summary of the changes:**

- **Adequate Insurance.** Adequate hazard insurance shall be based upon the replacement cost of the property as determined by an independent insurance appraisal or update of a prior appraisal. The full insurable value must be determined at least once every 36 months.
- **Self-Insurance and Pooling.** The provisions for self insurance and pooled insurance remain unchanged, but pooled insurance programs will now require the approval of

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the Office of Insurance Regulation.

- **Deductible.** The deductible must be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is located. The Board must establish the amount of the deductible based upon the level of available funds and predetermined assessment authority at a meeting of the Board. Such meeting requires fourteen (14) days notice by mail to the owners and must be open to all unit owners. The notice must state the proposed deductible and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit. The Board meeting may be held in conjunction with budget meeting.

- The Association insures:

- (1) All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications;

- (2) All alterations and additions made to the condominium property pursuant to 718.113(2) (which means that alterations installed by individual owners will be excluded from the Association's coverage obligations.)

- (3) Same as before (floor, wall and ceiling coverings, etc.) except the statute will no longer exclude air conditioning and heating equipment from the Association's coverage obligations.

• **Unit Owner Insurance Responsibility.** Unit owner coverage is still mandated, but the statute will also require individual unit owner policies to provide \$2,000.00 of loss assessment coverage per occurrence. The unit owner is required to provide proof of hazard and liability insurance upon request, but not more than once per year. The new statute also requires that the Association be named as an additional insured and loss payee on all casualty policies issued to unit owners. The statute also provides that all improvements or additions to the Condominium Property that benefit fewer than all owners must be insured by the unit owners having the use thereof or may be insured by the Association at the cost and expense of the owners having the use thereof.

This provision is subject to interpretation and could be interpreted to apply to limited common element parking spaces, storage lockers, and even balconies and patios but we do not believe that was the intent .

• **Reconstruction.** All reconstruction is to be undertaken by the Association if the reconstruction work involves damages to portions of the property which the Association insures. The Association can authorize unit owners to undertake reconstruction work with the prior written consent of the board, but can condition such work upon the approval of the repair methods, qualifications of contractors, etc. Unit owners will be responsible for reconstruction of the property to the extent the damage pertains to portions of the property which the owners insure. If the Association undertakes reconstruction work for which the owners are responsible, the Association can charge the unit owner and lien the unit for the costs.

Exceptions to Association Responsibility for Cost of Reconstruction.

(1) The Association will not be responsible for reconstruction of unit owner alterations if the

improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not located within the unit.

(2) Damages caused by casualty loss but which are attributable to unit owner negligence or failure to comply with the requirements of the covenants will be repaired at the expense of the owner.

(3) Casualty losses within the units which were known or should have been known to the owner and not reported to the Association in a timely manner, such that the claim was denied on that basis, will also be the financial responsibility of the unit owner.

Expanded Powers of the Division

The Division can now remove a person as an officer or from the board of administration and prohibit them from serving as an officer or board member for a period of time.

Provides for Penalties against associations that fail to provide records access to unit owners are strengthened; grants subpoena powers to the Division; provides for records to be provided electronically.

Penalties against associations that fail to provide records access to unit owners are strengthened; grants subpoena powers to the Division; provides for records to be provided electronically

Granted the power to establish a governance form to be provided by the Division including various topics related to condominium education, rights and responsibilities that a seller must provide, at the seller's expense, to a potential purchaser; identifies specific language noting that in the event of a conflict, the provisions of Chapter 718, FS, Division rules, and association documents prevail.



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Community association name: _____

Mailing Address: _____

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Comments: _____

Thank you!

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