

Asset Protection in Florida

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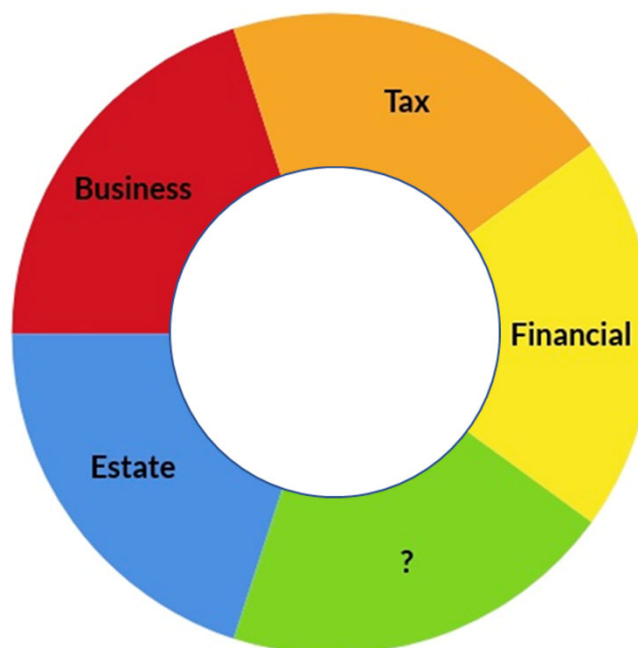
I. Overview



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Planning Cycle



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Asset Protection Overview

- Identify risks
- Isolate and minimize risks
- Insurance
- Ask “what if...?”
- Review assets
- Forms of Protection
 - State law exempt assets
 - Partnership planning
 - Trust planning
- Fraudulent transfers



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Sources of Risk

- Business related risks
- Professional liability
- Motor Vehicles
- Premises Liability
- Guaranteed Debt



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Insurance

- Professional Liability Insurance
- Automobile Coverage
- Homeowner's Coverage
- Commercial Liability
- Personal Umbrella Liability



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Types of Assets

- Liquid Assets – Cash and Marketable Securities
- Real Estate
- Accounts Receivable
- Motor Vehicles
- Tangible Personal Property



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Forms of Protection

- State law exempt assets
- Partnership planning
- Trust planning (APT)
- Planning for Unique Assets



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II. Basic Planning Under State Law

*Identifying and utilizing state law and
asset exemptions*



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Florida

- Generous exemption statute
- Generous legal background
 - Joint ownership
 - Limited partnership laws



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Florida

- Homestead
- Tenancy by the Entirety
- Statutory Exemptions
 - Annuities and Life Insurance
 - Pension and Retirement Funds
 - Wages of Head of Household



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Homestead

- Land and improvements protected
- Protected value unlimited
- One-half acre within municipality
- 160 acres outside municipality
- Forced sale exemption, not tax exemption
- Complexities
 - residency
 - transiency
 - transition
 - Proceeds from sale of Homestead
- Fraudulent transfer carve out



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Tenants by the Entirety

- Specific form of Joint Ownership
- Limited to Spouses
- Assets protected from individual liabilities of either spouse
- Presumptions
 - real estate
 - personal property: *Beal Bank v. Almond*



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Limitations of Entirety Protection

- Joint Liabilities
- Duration of Marriage
 - Death
 - Divorce
- Fraudulent Transfer Statute and litigation scenarios



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Life Insurance and Annuities

- Cash Surrender Value of Policies Insuring the Lives of Florida Citizens
- Right to Payments under Annuity Contracts



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Pension and Retirement Plans

- Balances in Qualified Plans Exempt
 - Money Purchase
 - Profit Sharing
 - IRA
 - 401(k)
- Nonqualified Rollover



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Wages

- Exemption Limited to *Head of Family*
- More than one-half support of...
 - Minor child
 - Other dependent
- Exempt Wages can not be garnished
 - At the source
 - At a financial institution for six (6) months



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Sources of Risk

- Business related risks
- Professional liability
- Motor Vehicles
- Premises Liability
- Guaranteed Debt



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III. Partnership Planning

The business of asset protection



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Estate Planning and Asset Protection

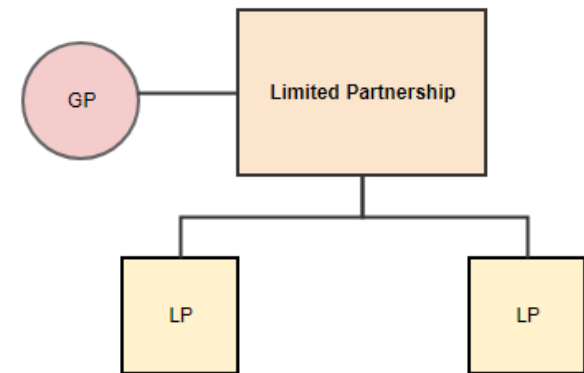
- Limitations of revocable EP trust
- Tension between EP and AP at basic level
- T by E and joint trust?



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Limited Partnerships

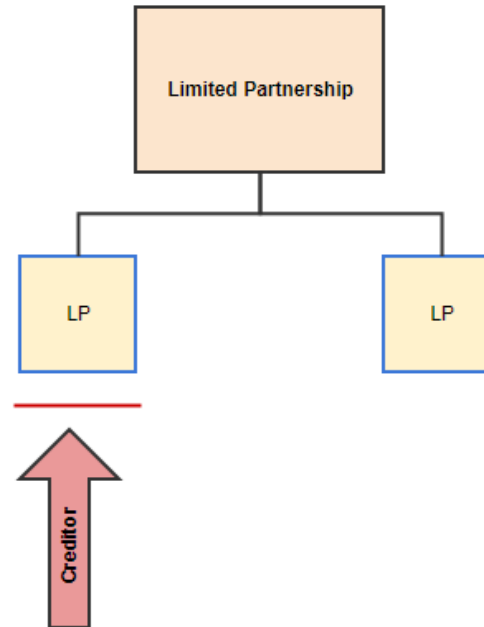
- General Partner
- Limited Partners
- Asset Protection – Charging Order
- Estate Planning



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Understanding the Charging Order

- *Lock Box*
- Assets protected
- Access denied
 - To the creditor
 - To the partners



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Partnership Rules

- Partnership = Business
- Limited Partner = Owner
- Distributions are *pro rata*
- Use and Possession are *pro rata*



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Tax Issues

- Income tax
- Capital gains tax
 - contribution of real estate
 - Contribution of securities
- Estate and Gift Tax
 - Valuation and Discounts
 - Return
 - Inclusion



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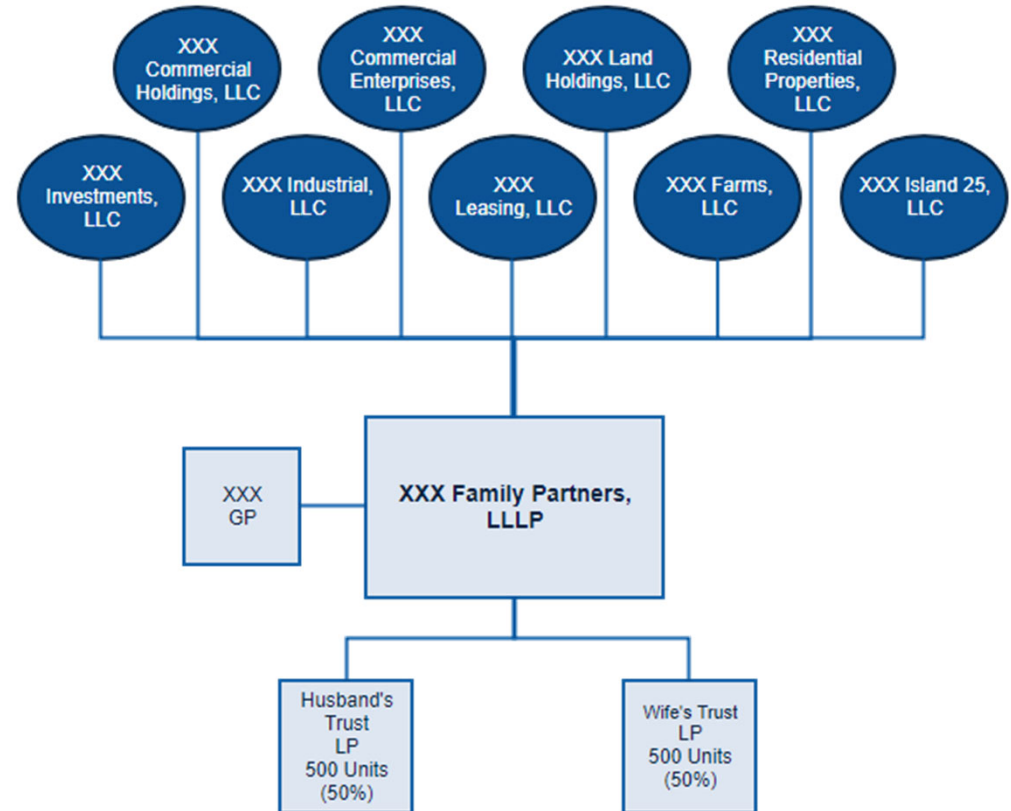
Leveraged Gifting

- Gift of a limited partnership interest is not a gift of the underlying assets
- Partnership Agreement
 - Lack of marketability
 - Lack of control
- Discounts in the range of 40%
- Powerful Estate Tax planning tool



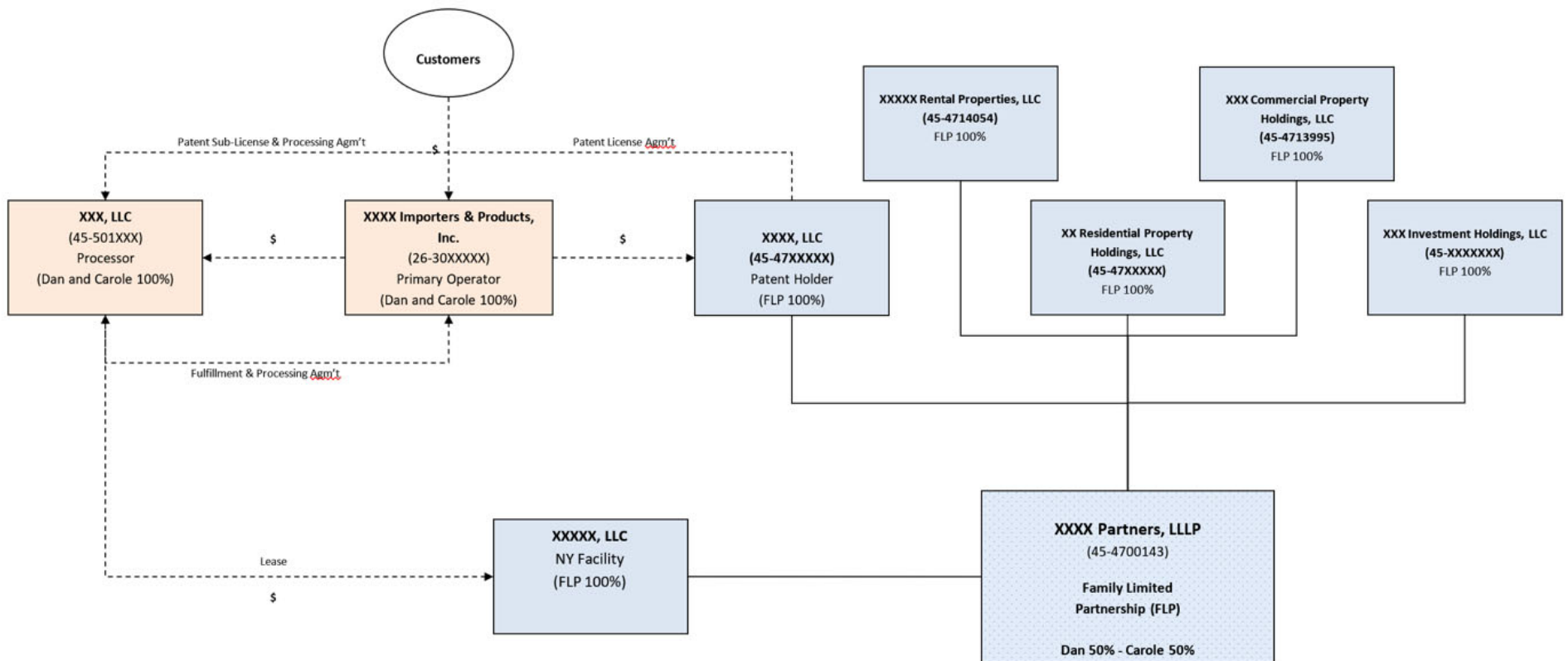
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- Real Estate Portfolio
 - Single Name
 - No protection
 - Exposed to all risks (external and internal)
 - Unfunded Trusts
 - Taxable estate
-
- ✓ Formed FLP
 - ✓ No doc stamps
 - ✓ Protect client from
 - ✓ Segregated holdings
 - ✓ Funded Trust
 - ✓ Gifted majority @ 40% discount
 - ✓ Fully sheltered from Estate Tax



Operating Business Issues...

Structure Overview



III. Trust Planning

Myth v. reality



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Trust Basics

- Settlor
- Trustee
- Beneficiaries
- Spendthrift Provisions
- Florida EP Trust – No Asset Protection



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Domestic Asset Protection Trusts

- Self-settled spendthrift trusts recognized
- Potential Limitations
 - Full faith and credit
 - Supremacy
- Fixed Assets



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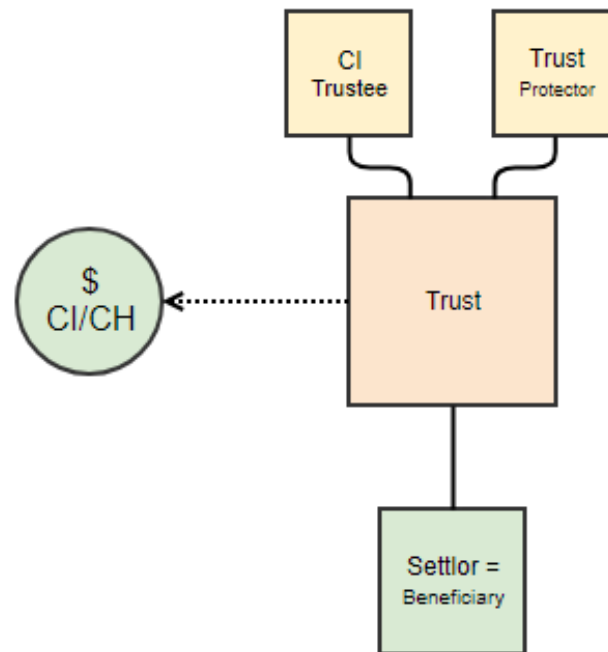
Offshore Trust Planning

- Non-recognition of foreign judgments
- Favorable fraudulent transfer laws
- Trust Protectors
- Duress clauses recognized
- Flee clauses recognized
- Established judicial track record
- Secrecy is irrelevant



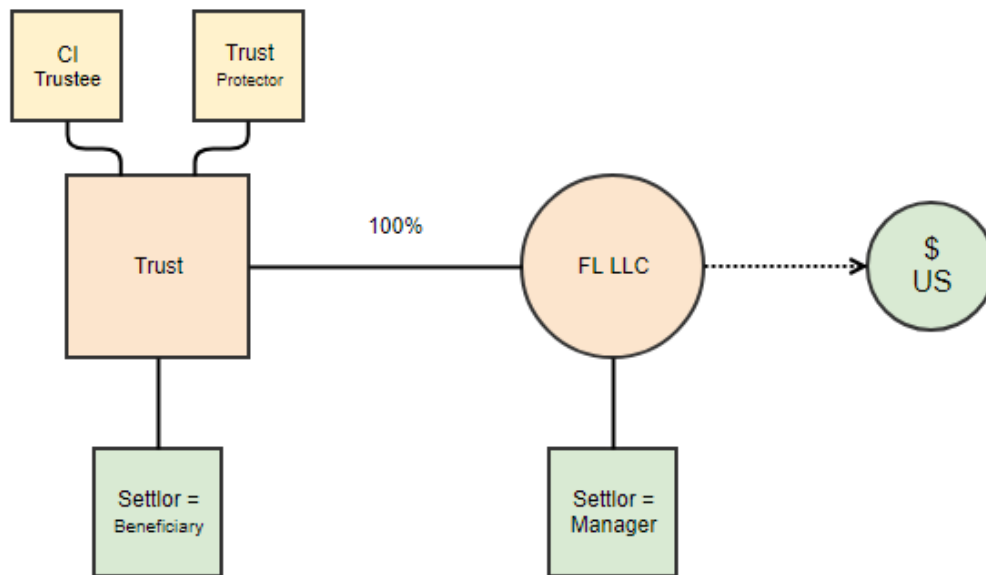
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Offshore Trust with Expatriated Assets



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Offshore Trust with Domestic Assets



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Related Issues

- US Co-trustee
- Tax Neutral
 - No Benefit
 - No Burden
- Trust Protector
- Investment Advisor Agreements



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Partnership vs. Trust

- Charging Order
- GP Control
- Limited Partners
- Distributions
- Real Estate/Business
- Trust Protection
- Settlor Control
- Beneficiaries
- Withdrawals
- Liquid Assets



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Thank You!

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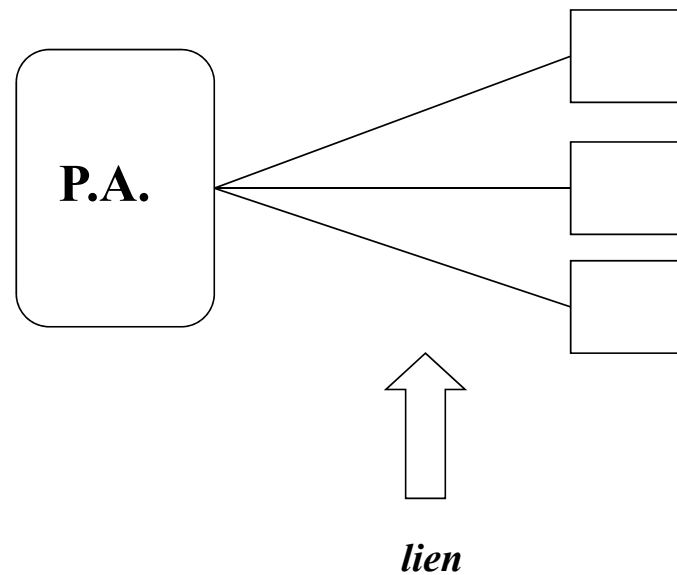
Fraudulent Transfers

- Intention to Avoid, Hinder, Delay
- Known or Anticipated Creditors
- Facts Control
- Timing is Key
- Ethics
- Urgency



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Accounts Receivable



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Unique Assets

- Motor Vehicles
- Accounts Receivable
- Other Tangible Personal Property



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NO PARTNERSHIP

Estate	10,000,000
Exemption Equivalent	<u>(2,000,000)</u>
Assets Exposed to Estate Tax	<u><u>8,000,000</u></u>



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PARTNERSHIP

Retained Assets

Estate	10,000,000
Out to FLP	(7,000,000)
Retained partnership interest	700,000
Gift Tax Paid	(1,500,000)
Exemption Equivalent	(1,000,000)
Exposed to Estate Tax	<u>1,200,000</u>

FLP

Taxpayer's interest pre-gift	7,000,000
90% Gift	6,300,000
Discounted Value of 90% Gift	4,095,000
Exemption Equivalent	(1,000,000)
Exposed to Gift Tax	<u>3,095,000</u>
Total Assets Expose to Estate/Gift Tax	<u>4,295,000</u>



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Assets Exposed to Tax

No Partnership	8,000,000
Partnership	4,295,000
Difference	3,705,000



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