

## Real Estate Ownership: Nebraska

by Max J. Burbach, Koley Jessen P.C., L.L.O., with Practical Law Real Estate

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A Q&A guide to commercial real estate laws for owners and purchasers in Nebraska. This Q&A addresses state laws and customs that impact the ownership and the purchase and sale of commercial real estate, including real property taxes, transfer taxes, instruments for transferring fee title, execution and recording requirements, necessary disclosures, title insurance matters, and risk of loss. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Ownership: State Q&A Tool).

Real estate and construction transactions are currently being impacted by emergency measures enacted in response to the 2019 novel coronavirus disease (COVID-19). For current updates on certain state and local laws impacted by COVID-19, including eviction and foreclosure moratoriums, business closures, electronic signatures, recordings and notarization laws, and general crisis management guidance in handling real estate and construction matters, see [Real Estate Global Coronavirus Toolkit](#).

### Types of Estates and Taxable Real Property

#### 1. When an estate in real property is conveyed, granted, or demised, is it deemed to be transferred as an absolute fee simple estate?

In Nebraska, unless the deed specifies otherwise, when real property is conveyed, granted, or demised, it is deemed to be transferred as an absolute fee simple estate, assuming the grantor owns the real property as an absolute fee simple estate.

Unless a conveyance indicates an intent to pass a lesser estate, the conveyance of real estate passes all of the grantor's real estate to the grantee (Neb. Rev. St. § 76-104).

#### 2. Is there specific language which must appear in a deed to convey an absolute fee simple estate?

Nebraska law does not require any specific language (Neb. Rev. St. § 76-104). However, deeds frequently contain the

words "grant, bargain, sell, and convey" or "grant, sell, convey, and demise" in conveying a fee simple estate.

#### 3. What other freehold estates are permitted? Briefly describe each.

In Nebraska, in addition to a fee simple absolute, the following freehold estates are permitted:

- **Fee simple determinable or fee simple subject to condition subsequent.** These freehold estates each grant a fee simple interest but allow the grantor to retain a possibility of reverter or right of reentry after a specified event (for example, if the property ceases to be used for a specified use). Neither possibilities of reverter nor rights of reentry for breach of a condition subsequent are valid for more than 30 years from the date of creation (Neb. Rev. St. § 76-107(2)).
- **Life estates.** This is a freehold estate that is measured by the life or lives of one or more persons. When the life estate expires, the fee interest either:
  - passes to a third-party grantee; or
  - if no third-party grantee is designated, reverts to the grantor.



The fee simple conditional and fee tail have been abolished by statute in Nebraska (Neb. Rev. St. § 76-110).

### Real Property Taxes

#### 4. In relation to real property taxes, please describe:

- The kind of property that is taxable as real property.
- Any kind of real property that is exempt from real property taxes.
- The current rate and nature of the taxes (for example, assessed value or school tax).
- The payment and collection procedures.

#### Property Treated as Real Property

In Nebraska, the following is taxable as real property:

- All land.
- All buildings, improvements, and fixtures other than trade fixtures.
- All electric generation, transmission, distribution, and street lighting structures or facilities owned by a political subdivision of the state.
- Mobile homes, cabin trailers, and similar property that are not registered for highway use and have or are designed to have the following uses:
  - residential;
  - office;
  - commercial;
  - agricultural; or
  - other similar purposes.
- Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments for oil or gas leases.
- All privileges related to real property.

(Neb. Rev. St. § 77-103.)

Real property may be divided into a defined class or subclass, such as agricultural or horticultural land, to determine an appropriate valuation for tax purposes (Neb. Rev. St. §§ 77-201 and 77-1363).

#### Exemptions

Exemptions from Nebraska real property tax include:

- Property owned by the state or its governmental subdivisions to the extent that it is used for a public purpose.
- Unleased property owned by the state or its governmental subdivisions not used for a public purpose that is subject to a payment in lieu of taxes (PILOT) made to governmental units providing:
  - public safety;
  - rescue;
  - emergency; or
  - road or street construction or maintenance services.
- Property owned by and used exclusively for agricultural and horticultural societies.
- Property owned by or exclusively benefitting educational, religious, charitable, or cemetery organizations for those organizations' purposes.
- Household goods and personal effects not owned or used for financial gain.

(Neb. Rev. St. § 77-202.)

An exemption application must be submitted to the county assessor for the county in which the property is located by December 31 of the year preceding the year for which the exemption is sought (Neb. Rev. St. § 77-202.01).

Exemption forms are available on the Nebraska Tax Commissioner's [website](#).

#### Rate and Nature of Taxes

Real property is taxed at the local level. The county board determines the appropriate tax levy on or before October 15 of the current year, including county levies and all levies necessary to fund the tax requests certified to the county by local governments.

Local governments with the authority to levy taxes in Nebraska include:

- School districts.
- Learning communities.
- Community college areas.
- Natural resources districts.
- Educational service units.
- Incorporated cities and villages.
- Sanitary and improvement districts.

- Rural and suburban fire protection districts.
- Regional metropolitan transit authority.

(Neb. Rev. St. § 77-3442.)

The taxes levied vary depending on the property's location. However, the state imposes a maximum levy for each of the local governments authorized to levy taxes. In addition to general property taxes, special assessments may be assessed by local governments as provided by the statutes governing them.

### Payment and Collection

Real property taxes are paid in arrears for the prior year and become delinquent:

- For counties with a population of 100,000 or below:
  - May 1 for the first half.
  - September 1 for the second half.
- For counties with a population of over 100,000:
  - April 1 for the first half.
  - August 1 for the second half.

(Neb. Rev. St. § 77-204.)

Interest at the rate of 14% is imposed on property taxes not paid when due (Neb. Rev. St. §§ 77-207 and 45-104.01).

If the taxes are not paid by the first Monday in March in the year after they become delinquent, the property is subject to a delinquent tax sale. The following properties are exempt from tax sales:

- Mobile homes.
- Cabin trailers.
- Manufactured homes.
- Similar property assessed and taxed as improvements to leased land.

(Neb. Rev. St. § 77-1801.)

Delinquent tax sales are governed by the provisions of Neb. Rev. St. §§ 77-1801 to 77-1902.

## Instruments and Execution Requirements

**5. What deeds (or other instruments) are used to convey fee title and which is most commonly used? Briefly describe each.**

The most commonly used deeds in Nebraska are:

- **General warranty deeds.** The grantor warrants to the grantee that:
  - the grantor holds clear title to the real property from the beginning of the property's origins; and
  - there are no defects in title whatsoever, "no matter how, when, or by whom they may arise" (*Morello v. Land Reutilization Comm'n*, 659 N.W.2d 310, 314 (Neb. 2003)).
- **Special warranty deed.** The grantor of a special warranty deed does:
  - not warrant against any defects in title that existed before the grantor owned the property; and
  - warrant against any defects in title arising out of the grantor's "acts or omissions."(*Morello*, 659 N.W.2d at 314.)
- **Quitclaim deed.** There are no warranties of title from the grantor to the grantee (*Morello*, 659 N.W.2d at 314). Quitclaim deeds are generally not used unless there is a question about the grantor's ownership interest in the property.

Occasionally, deeds specific to the position of the grantor are used, including:

- Trustee's deeds.
- Personal representative's deeds.

### 6. Are there any specific state or local recording requirements necessary to record a deed? In particular, please specify if:

- Specific officers must sign for a corporation or other entity.
- Specific language is required to evidence the authority of a signatory for a corporation or other entity.
- A certificate of authority to do business in your state is required if the grantee on the deed is a foreign company.
- The corporation's seal is required on the signature page.
- There are specific margins or headings required for the deed.
- A cover page is required for recording.
- There are any other requirements.

For information on Nebraska's adoption of e-signatures/e-recording and remote online notarization, see Question 21.

### Officers

Under Nebraska law, no specific officers are required to sign for a corporation or other entity. However, the officer who does sign must be authorized by the corporation or other entity's organizational documents. Most title companies require evidence of authority (such as resolutions or consent minutes) for the individual executing the deed to issue title insurance.

An instrument transferring any interest in real property by a corporation is presumed valid when signed by:

- The president.
- The vice president.
- The presiding officer of the board of directors.

(Neb. Rev. St. § 21-227.)

### Language for Signature Block

Below the signature in the signature block, the name of each signing party must be either typed, printed, or stamped. The signature itself:

- Must be in black or dark blue ink.
- May be digital or electronic.

(Neb. Rev. St. § 23-1503.01(3).)

### Authorization to Do Business

Nebraska law does not require an entity to:

- Indicate on the deed that it is authorized to do business in Nebraska.
- Attach any certificate of authority to do business in Nebraska.

### Corporate Seal

Nebraska law does not require corporate seals on the signature page (Neb. Rev. St. § 76-213).

### Margins or Headings

Nebraska law requires the following margins for recording documents:

- A blank header measuring at least three inches by eight and one-half inches at the top of the first page.

- A one-inch margin on all remaining sides of the first page.
- A one-inch margin on all other pages of the document. (Neb. Rev. St. § 23-1503.01.)

### Cover Page

Nebraska law does not require a cover page but, if the first page header is insufficient (see Margins or Headings), the county recorder often adds a cover page at a charge of \$6 for the added page (Neb. Rev. St. §§ 23-1503.01 and 33-109).

### Other Requirements

In Nebraska, other recording requirements include that:

- Documents must be printed, typewritten, or computer-generated in black ink on white paper (or white background, if electronic) that is:
  - at least 8.5 inches by 11 inches and not more than 8.5 inches by 14 inches;
  - at least 20-pound weight; and
  - without watermarks or other visible inclusions.
- The font size must be 8-point or larger.
- Documents must be sufficiently legible to produce clear copies.
- Documents must be free of an embossed or inked stamp that covers or materially interferes with any part of the instrument.

(Neb. Rev. St. § 23-1503.01(3).)

To avoid potential clouds of title, if the grantor is an individual, the grantor's marital status should be listed and, if married, the spouse should sign to disclaim any marital interest in the property.

Further, the grantor's name should match the name used in the chain of title or any previously used names should be added after the name of the grantor, for example:

- John Smith, also known as John J. Smith.
- Jane Smith, formerly known as Jane Doe.

If the grantor is an entity, the entity's exact name should be used, and if this differs from the name previously used, the previously used name should be added after the name of the grantor with an explanation of the difference between the two names (whether there was a name change, reorganization, or other change).

**7. Provide the statutory form of acknowledgment for:**

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

Section 64-206 of the Nebraska Revised Statutes provides the following short forms of acknowledgment. However, they do not preclude the use of other forms that meet the requirements of the Uniform Recognition of Acknowledgments Act (Neb. Rev. St. §§ 64-201 to 64-210).

For Nebraska notarizations performed using remote online notarization (RON) (see Question 21), the online notarial certificate must contain:

- The online notary public’s signature, online notary seal, title, and commission expiration date.
- Any other required information about the date and place of the online notarial act.
- The completed wording of an acknowledgment notarial certificate.
- A notation that the notarial act is an online notarial act.
- An electronic certificate of authority demonstrating the authenticity of the electronic signature and notary seal containing substantially the following language:

I [NAME], [TITLE], [JURISDICTION OF COMMISSIONING OFFICIAL], certify that [NAME OF ONLINE NOTARY PUBLIC], the person named as an online notary public in the attached or associated document, was indeed registered as an online notary public for the State of Nebraska and authorized to act as such at the time of the document’s electronic notarization. To verify this Certificate of Authority for an Online Notarial Act, I have included herewith my electronic signature this [DATE] day of [MONTH], [YEAR].

[ELECTRONIC SIGNATURE AND SEAL OF COMMISSIONING OFFICIAL]

(Neb. Rev. St. §§ 64-402(8), 64-411(5), and 64-415(2).)

Once the signatures are complete, a time-stamped seal is generated on the electronic certification.

There may be other detailed requirements for performing RON in Nebraska. Reference should be made to the statutes, any applicable emergency orders, and any rules promulgated by the applicable state authority to understand all RON requirements and conditions (see Question 21).

**Individual**

STATE OF [STATE] )  
 COUNTY OF [COUNTY] )

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF PERSON ACKNOWLEDGED].

\_\_\_\_\_  
 (Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

**Corporation**

STATE OF [STATE] )  
 COUNTY OF [COUNTY] )

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF OFFICER OR AGENT], [TITLE OF OFFICER OR AGENT] of [NAME OF CORPORATION ACKNOWLEDGING], a [STATE OR PLACE OF INCORPORATION] corporation, on behalf of the corporation.

\_\_\_\_\_  
 (Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

**Limited Liability Company**

STATE OF [STATE] )  
 COUNTY OF [COUNTY] )

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ACKNOWLEDGING MEMBER OR AGENT], [member/agent] on behalf of [NAME OF LIMITED LIABILITY COMPANY], a limited liability company.

\_\_\_\_\_  
 (Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

### Limited Partnership

The form below is acceptable for all forms of partnerships:

STATE OF [STATE] )

COUNTY OF [COUNTY] )

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ACKNOWLEDGING PARTNER OR AGENT], [partner/agent] on behalf of [NAME OF PARTNERSHIP], a partnership.

\_\_\_\_\_  
(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

### Trustee

The form below is acceptable for any public officer, trustee, or personal representative.

STATE OF [STATE] )

COUNTY OF [COUNTY] )

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF TRUSTEE], [TITLE OF POSITION].

\_\_\_\_\_  
(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

### Individual Acting as Principal by an Attorney-in-Fact

STATE OF [STATE] )

COUNTY OF [COUNTY] )

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ATTORNEY-IN-FACT], as attorney-in-fact on behalf of [NAME OF PRINCIPAL].

\_\_\_\_\_  
(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

## Disclosures, Necessary Filings, and Transfer Fees

**8. Must the ultimate (whether direct or indirect) beneficial owner of an entity that owns real property be publicly disclosed? Briefly describe what is required and in what circumstances.**

Nebraska law does not require disclosing the direct or indirect beneficial owner of an entity that owns real property.

Some counties in Nebraska, like Douglas County, make the [Real Estate Transfer Statement](#) available through an online search. Any names or addresses that the grantee does not want disclosed should not be included on the Real Estate Transfer Statement.

**9. When a corporation is the fee title owner of real property, must it record any documents to evidence a merger, conversion, or name change?**

No documents are required to be filed in the county records in Nebraska. However, corporations and limited liability companies must file articles of merger, conversion, or name change with the [Nebraska secretary of state](#) even if they do not own real property (Neb. Rev. St. §§ 21-118, 21-173, 21-177, 21-2,146, 21-2,155, 21-2,166).

**10. In connection with state and local transfer, stamp, or similar taxes and direct transfers of real property:**

- Describe any taxes which apply when fee title ownership is directly transferred.
- What transfer tax returns (or other documents) must be filed for direct transfers of real property?
- What is the timing for filing the returns and paying the transfer taxes on direct transfers?
- Are transfer taxes customarily paid by the purchaser or the seller in a direct transfer of real property?

### Applicable Taxes for Direct Transfers

In Nebraska, a documentary stamp tax is imposed on the grantor at the current rate of \$2.25 for each \$1,000 of value or fraction of that (Neb. Rev. St. § 76-901).

There is no exemption for gifts or deeds with nominal consideration. In those cases, the tax is determined using the current market value of the property transferred.

A list of exemptions from the documentary stamp tax is available in Neb. Rev. St. § 76-902. Any exemption claimed must be clearly stated on the face of the deed.

### Returns

All grantees must file a [Real Estate Transfer Statement](#) when the deed is presented for recording. If the grantee is a trust that is claiming a tax exemption, it must also file a [Certificate of Exemption](#).

### Filing and Payment Deadlines

The documentary stamp tax and Real Estate Transfer Statement are due when the deed is presented for recording. Unless an exemption applies, the county cannot record the deed until it receives payment (Neb. Rev. St. § 76-903).

### Custom

The grantor customarily pays any documentary stamp tax due.

#### 11. In connection with state and local transfer, stamp, or similar taxes and indirect transfers of ownership interests in real property:

- Does an indirect transfer of real property ownership interests trigger transfer taxes? For example, would the transfer of corporate or membership interests of an owner of real property trigger transfer taxes?
- What transfer tax returns (or other documents) must be filed for indirect transfers of real property ownership interests?
- What is the timing for filing the returns and paying the transfer taxes on indirect transfers?
- Are transfer taxes customarily paid by the purchaser or the seller in an indirect transfer of real property ownership interests?

### Applicable Taxes for Indirect Transfers

Nebraska imposes a documentary stamp tax on the indirect transfer of real estate at the same rate that applies to direct conveyances. The tax is payable at the

current rate of \$2.25 for each \$1,000 of value or fraction of (Neb. Rev. St. § 76-901; see Question 10).

Gifts or deeds with nominal consideration are not exempt from the transfer tax. In those cases, the tax is determined using the current market value of the property transferred.

The tax does not apply to deeds:

- Made under mergers, consolidations, sales, or transfers of the assets of corporations under plans of merger or consolidation filed with the office of the [Nebraska secretary of state](#). A copy of the plan of merger or consolidation must be presented to the county register of deeds before the exemption is granted. (Neb. Rev. St. § 76-902(8).)
- From a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock (Neb. Rev. St. § 76-902(9)).

Any exemption claimed must be clearly stated on the face of the deed.

### Returns

All grantees must file a [Real Estate Transfer Statement](#) when the deed is presented for recording. If the grantee is a trust claiming a tax exemption, it must also file a [Certificate of Exemption](#).

### Filing and Payment Deadlines

The documentary stamp tax and real estate transfer statement are due when the deed is presented for recording. Unless an exemption applies, the county cannot record the deed until it receives payment. (Neb. Rev. St. § 76-903.)

### Customs

The grantor customarily pays for any documentary stamp tax due.

## Recording Interests and Title Insurance

#### 12. Where are ownership interests recorded and how are they indexed?

In Nebraska, ownership interests are recorded with the county register of deeds for the county in which the

property is located. The ownership interests are indexed in the grantor/grantee index. (Neb. Rev. St. § 23-1508.)

Some counties make recorded documents available to view and search online through subscription services.

### 13. Do title insurance companies or attorneys typically conduct title searches?

Title insurance companies typically conduct title searches in Nebraska. Abstracts of title are rarely used.

### 14. What form of title assurance is available to a purchaser? For example, is an abstract of title, a title insurance policy, or a title opinion more common?

The most commonly used form of title assurance in Nebraska is a title insurance policy. Sometimes an attorney may be asked to review an abstract of title and provide a title opinion in, for example, a review of ownership of mineral interests.

### 15. Are title insurance premiums or service charges for owners' title insurance policies regulated? Is the cost of title insurance negotiable within a specified range of rates? Are there any discounts available for reissued policies?

Nebraska is a filed-rate state, so premiums must be filed with the [Nebraska Department of Insurance](#). Agents are not allowed to deviate from those rates (Neb. Rev. St. § 44-1997).

### 16. List the title endorsements available for an owner's title insurance policy for non-residential property.

Title companies in Nebraska issue American Land Title Association (ALTA) owner's and lender's policies of title insurance. The standard ALTA form endorsements are available.

The title company may charge additional fees for:

- Removal of standard exceptions.
- Issuance of endorsements.

The following title endorsements, among others, are commonly available for an owner's title insurance policy for non-residential property:

- ALTA 3, 3.1, and 3.2 (Zoning), although most title companies do not issue a zoning endorsement without a letter from the applicable zoning authority.
- ALTA 8.1 and 8.2 (Environmental Protection Lien).
- ALTA 9 (Restrictions, Encroachments, Minerals).
- ALTA 17 (Access and Entry).
- ALTA 18 and 18.1 (Tax Parcel).
- ALTA 19 and 19.1 (Contiguity).
- ALTA 25 (Survey).

Many other ALTA endorsements are available for specific situations.

## Risk of Loss

### 17. Is the risk of loss during the contract period typically on the seller or on the purchaser if the contract is silent?

In Nebraska, the seller customarily retains risk of loss before closing under express contractual terms.

Nebraska case law is sparse on the issue of who bears the risk of loss when a contract to purchase real property is silent. Nebraska adopted the doctrine of equitable conversion in 1921, but there is little authority discussing the issue after this case. Under the doctrine of equitable conversion, the risk of loss is equitably with the purchaser during the contract period (the period between signing the contract of sale and closing) if:

- The contract is silent.
- The seller can and is willing to convey the property.

(*McGinley v. Forrest*, 186 N.W. 74, 75 (Neb. 1921).)

The doctrine of equitable conversion does not apply if the parties to the contract expressly state the party bearing the risk of loss (*Hans v. Lucas*, 703 N.W.2d 880, 884-85 (Neb. 2005)).

Nebraska has not adopted the Uniform Vendor and Purchaser Risk Act.

### Real Property Investment Vehicles

#### 18. What are the most common forms of investment vehicle for real property and what are the most common entities used?

In Nebraska, limited liability companies (LLCs) are widely used for investing in real property, including the formation of single-purpose LLCs.

The following are also used in Nebraska:

- Corporations.
- General partnerships.
- Limited partnerships.
- Joint ventures.

#### 19. Are real estate investment trusts (REITs) or similar entities currently permitted? If so, are they common?

Real estate investment trusts are permitted but are not commonly used in Nebraska.

### Regulation and Taxation

#### 20. Is there significant regulation and taxation of real property locally? Is there significant variation in the regulation and taxation?

Regulation and taxation of real property in Nebraska:

- Occurs on the local level by:
  - counties, cities, and other municipalities;
  - school districts;
  - learning communities;
  - sanitary, natural resource, and improvement districts; and
  - other local governmental entities.
- Is limited by statute for local governments.
- Varies significantly by location.

(Neb. Rev. St. § 77-3442.)

### Electronic Signatures, Recording, and Notarization Laws

#### 21. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Note that despite adoption of the applicable electronic laws referred to below, the transaction parties or recording offices may not be required to accept documents executed or notarized electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures and/or remotely notarized documents and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.

#### Electronic Signatures

Nebraska has adopted the UETA (Neb. Rev. St. §§ 86-612 to 86-643).

#### Electronic Recording

Nebraska has not adopted the URPERA. However, the register of deeds or county clerk must provide electronic recording services to accept electronically submitted real estate documents for recording (Neb. Rev. St. § 86-611(8)).

### Remote Online Notarization

Nebraska has adopted RON (Neb. Rev. St. §§ 64-401 to 64-418).

There are detailed requirements for performing RON (for example, see Question 7). Reference should be made to the statute, any applicable emergency orders, and any rules promulgated by the secretary of state or other

state authority to understand all RON requirements and conditions.

For a state-by-state chart covering key provisions of RON laws, emergency orders permitting RON during the COVID-19 pandemic, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#).

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