



## NORTH CAROLINA REAL ESTATE COMMISSION

# Real Estate Bulletin

Volume 14

1984

Number 4

## COMMISSION IMPLEMENTS NEW LICENSE EXAMINATION PROGRAM

One year ago, the Real Estate Commission undertook the ambitious task of developing and implementing a new real estate license examination program whereby all examination services (except actual administration of examinations to candidates) would be performed "in-house" by the Commission staff. The Commission had previously contracted with a private testing firm for license examination services.



Application Processor Gloria Williams computer-schedules examinees as computer consultant, Dr. Peter Simis, observes.

After months of intense preparation, the new examination program was successfully implemented in January with 1,409 candidates (a four-year record) being examined at exam centers in Asheville, Charlotte, Greenville, Raleigh, Wilmington and Winston-Salem.

Presented below is a summary of some of the developmental and administrative aspects of this new and unique examination program, as well as the expected benefits of the program.

### Exam Development

The first step in developing the new license examinations was to determine those subjects on which applicants for real estate licenses should be examined. The Real Estate Commission was especially insistent that the examinations be "job-related";

that is, that the subject matter of the examinations be directly related to the activities performed by practicing real estate brokers and salesmen. To accomplish this, detailed examination



Exam booklets and materials are produced under strict security in Commission Office.

"specifications" were developed with the assistance of a special committee of experienced real estate practitioners and educators. These specifications consisted of a detailed list of examination topics (and the number of questions to be asked on each topic) with each topic being assigned a "competency level" representing the knowledge and skill level which beginning (entry-level) salesmen and brokers should possess.



Staff Member Vickie Crouse scores exam answer sheets using electronic scanner.

The next step was to develop a "bank" of questions. Proposed questions were written by real estate educators and practitioners according to the exam specifications and detailed question-writing guidelines developed by the Commission and a testing expert. The proposed questions were then subjected to two initial reviews:

first by the Commission staff, and then by another select committee of real estate educator-practitioners. All approved questions were then entered into a micro-computer housed in the Commission office with each question being computer-coded both by topic and by approved use (salesman exam only, broker exam only, salesman or broker exam).



Education Director Larry A. Outlaw (center) analyzes exam statistics. Assisting are testing expert Dr. Kinnard White (left) and Dr. Joseph M. Davis (Ph.D. Real Estate, MA) consultant to the Commission.

"Prototype" examinations were then generated by the computer for use in a study to determine appropriate passing scores for the examinations. This study was performed by still another committee of real estate practitioners under the supervision of a testing and measurement expert. After carefully considering the committee's recommendations and reviewing the prototype examinations, the Commission adopted passing scores of 75% for both the salesman and broker examinations.

Drafts for the first examinations were then prepared and again reviewed and edited by the Commission staff and a testing consultant. Examinations for each monthly examination will be produced in a similar manner, with each month's examination being unique yet comparable in both scope and difficulty.

(Continued on Page 5)

## REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate Licensing Law, Rules and Regulations, and proficiency in ethical real estate practice. The articles published herein shall not be reprinted or reproduced in any other publication without specific reference being made to their original publication in the North Carolina Real Estate Commission Real Estate Bulletin.

### NORTH CAROLINA REAL ESTATE COMMISSION

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### EXAM RESULTS

EXAMINATION—December, 1983

	Passed	Failed
Brokers	105	214
Salesmen	302	195

EXAMINATION—January, 1984

	Passed	Failed
Brokers	217	371
Salesmen	468	353

The Commission wishes to thank those many real estate brokers and salesmen, educators, attorneys, appraisers, mortgage bankers and others who so unselfishly gave of their time and talents in the development of the new license examination program.

## COMMISSION ADOPTS TIME SHARE RULES

At its January, 1984 meeting, the North Carolina Real Estate Commission adopted six new rules dealing with the registration of time share projects located in North Carolina. Under the new Time Share Act, time share developers are required to register their projects with the Commission by July 1, 1984.

The new statute, which has been made Article 4 of the Real Estate License Law, authorizes the Commission to set the project registration fees and to establish the forms and procedures for registering time share projects. Accordingly, the rules adopted by the Commission establish a time share registration application form which calls for important information about the developer and the persons involved in the marketing and management of the project, as well as detailed information concerning the property and time shares themselves.

Under the rules, there will be a \$1,000 fee required to register a time share project and annual renewal fees of \$500. The amount of these fees was based upon the Commission's best estimate of the cost of administering and enforcing the Time Share Act. (The statutory limit for the registration and renewal fees are \$1500 and \$750 respectively.)

The new rules also address the Public Offering Statement which developers will be required to deliver to prospective time share purchasers to disclose such things as the purchaser's financial obligation, the availability of the project's amenities and facilities, the duration of the time share and the purchaser's right to exchange his time share. The new rules also prescribe the form and content of the Public Offering Statement Summary (reproduced below) which will form the cover of the Public Offering Statement.

The new rules constitute subchapter B of the Commission's rules and will become effective on March 1, 1984.

### PUBLIC OFFERING STATEMENT SUMMARY

NAME OF PROJECT \_\_\_\_\_  
ADDRESS OF PROJECT \_\_\_\_\_  
NAME OF SALESMAN \_\_\_\_\_

This Public Offering Statement contains information which deserves your careful study. The Public Offering Statement contains answers to the following questions which should be of particular importance to you.

BEFORE YOU SIGN ANY CONTRACT WHICH OBLIGATES YOU TO PURCHASE A TIME SHARE, YOU SHOULD CONSIDER

1. When will my time share be available to me?  
See Public Offering Statement page \_\_\_\_\_
2. What will be my total cost, including my initial cost, periodic fees and other charges?  
See Public Offering Statement page \_\_\_\_\_
3. Who may change these charges and how?  
See Public Offering Statement page \_\_\_\_\_
4. How will the time share project be maintained in the future?  
See Public Offering Statement page \_\_\_\_\_
5. When will each amenity and recreation facility (swimming pool, golf course, tennis courts, etc.) be available for my use?  
See Public Offering Statement page \_\_\_\_\_
6. Will I be able to exchange my time share for a time share somewhere else? If so, how?  
See Public Offering Statement page \_\_\_\_\_
7. How and when will the title to my time share be recorded?  
See Public Offering Statement page \_\_\_\_\_

### NOTICE

UNDER NORTH CAROLINA LAW, YOU MAY CANCEL YOUR TIME SHARE PURCHASE WITHOUT PENALTY WITHIN FIVE (5) DAYS AFTER SIGNING YOUR CONTRACT. TO CANCEL YOUR TIME SHARE PURCHASE, YOU MUST MAIL OR HAND DELIVER WRITTEN NOTICE OF YOUR DESIRE TO CANCEL YOUR PURCHASE TO \_\_\_\_\_

(Project name/address)  
IF YOU CHOOSE TO MAIL YOUR CANCELLATION NOTICE, THE REAL ESTATE COMMISSION RECOMMENDS THAT YOU USE REGISTERED OR CERTIFIED MAIL AND THAT YOU RETAIN YOUR POSTAL RECEIPT AS PROOF OF THE DATE YOUR NOTICE WAS MAILED. UPON CANCELLATION, ALL PAYMENTS WILL BE REFUND-ED TO YOU.

# Notice of Hearing

Notice is hereby given that the North Carolina Real Estate Commission, pursuant to the authority vested in it by Sections 93A-3(c), 93A-4(d), 93A-33, 150A-11 and 150A-16 of the General Statutes of North Carolina, proposes to amend and repeal certain rules contained in Title 21, Chapter 58 of the North Carolina Administrative Code, to be effective May 1, 1984.

More specifically, the Real Estate Commission proposes to:

1. Repeal Rule .0102 concerning branch offices.
2. Make technical amendments in Rule .0103 concerning licensee changes of address or business name.
3. Replace the term "designated broker" with the term "broker-in-charge"; define the term "real estate office"; and require the broker-in-charge to supervise the salesmen in his office in Rule .0110.
4. Make technical amendments in Rule .0301 concerning the real estate license application form.
5. Make technical amendments in Rule .0302 concerning the receipt of applications.
6. Amend Rule .0501 concerning the character of applicants for licensure to eliminate unnecessary repetition of the licensing statutes.
7. Amend Rule .0504 to revise procedure for issuance of original salesmen's licenses.<sup>1</sup>
8. Make technical amendments to Rule .0507 concerning the payment of license fees.
9. Repeal Rule .0508 concerning duplicate license fees.<sup>2</sup>
10. Amend Rule .0601 to establish minimum requirements for pleadings in contested cases before the Commission and to eliminate unnecessary repetition of the General Statutes.
11. Repeal Rule .0603 concerning requests for hearings.
12. Repeal Rule .0604 concerning notices of hearings in contested cases to eliminate unnecessary repetition of the General Statutes.
13. Repeal Rule .0605 concerning hearing officers in contested cases to eliminate unnecessary repetition of the General Statutes.
14. Repeal Rule .0606 concerning the consequences of a party's failure to appear at a hearing in a contested case to eliminate unnecessary repetition of the General Statutes.
15. Make technical amendments in Rule .0607 concerning petitions to reopen contested cases.
16. Repeal Rule .0608 concerning answers to complaints to eliminate repetition of, and inconsistencies with, the General Statutes.
17. Make technical amendments in Rule .0609 concerning intervention in contested cases.
18. Amend Rule .0610 concerning subpoenas to eliminate unnecessary repetition of the General Statutes and to clarify the Commission's policy toward subpoenas.
19. Amend Rule .0701 to simplify the requirements for petitions for rule-making and to place the disposition of all such petitions with the Commission.
20. Repeal Rule .0702 concerning the disposition of petitions for rule-making.
21. Repeal Rule .0703 concerning requests for information from the Commission.
22. Repeal Rule .0801 concerning requests to participate in Commission rule-making to eliminate unnecessary repetition of the General Statutes.
23. Amend Rule .0802 to liberalize the restrictions on written submissions from the public to the Commission concerning rule-making.
24. Repeal Rule .0804 concerning statements of reasons for rule-making to eliminate unnecessary repetition of the General Statutes.
25. Repeal Rule .0901 concerning the subjects of declaratory rulings by the Commission to eliminate unnecessary repetition of the General Statutes.
26. Amend Rule .0902 to simplify requirements for requests for declaratory rulings and to place the disposition of such requests with the Commission.
27. Repeal Rule .0903 concerning the disposition of requests for declaratory rulings.
28. Repeal Rule .0904 concerning applicability of declaratory rulings to eliminate unnecessary repetition of the General Statutes.

Notice is also given that any person interested in the Commission's proposals may present oral or written comments relevant to the action proposed at a public rule-making hearing to be held at 9:00 a.m. on the day of March 16, 1984, at the Commission's office at 1200 Navaho Drive, Raleigh, North Carolina.

Written comments not presented at the public hearing should be directed so as to be delivered no later than March 16, 1984, to the North Carolina Real Estate Commission, P.O. Box 17100, Raleigh, North Carolina 27619.

The amended rules proposed by the Commission are available for public inspection and requests for copies of the proposed amendments shall be in writing and delivered to the Commission's office in Raleigh.

This the 20th day of February, 1984.

Thomas R. Miller  
Deputy Legal Counsel  
Administrative Procedures  
Coordinator ☐

1. Under the proposed rule, all salesman licenses would be initially issued on Inactive License Status pending notification from the salesman of the name/address of the salesman's supervising broker. No fee would be charged to activate and issue an original salesman license.

2. The current \$1.00 fee would no longer be charged to replace a lost or destroyed license.



## Commission Notes

### McCandlish Leaves

#### Commission



Commission Member Dee McCandlish of Charlotte has been named Regional Vice President and Manager of the new Myrtle Beach, South Carolina office of Northwestern Mortgage Corporation. As a result of her promotion and her relocation to South Carolina, Ms. McCandlish has relinquished her membership on the Real Estate Commission.

Ms. McCandlish was appointed to the Commission by Governor Hunt in 1978, becoming the first woman in the State to serve on the Real Estate Commission. She was reappointed to a second three-year term in 1981 and was that year elected Chairman of the Commission.

In addition to her very active involvement with the Real Estate Commission, she has been a member and past-president of the Mortgage Bankers Association of the Carolinas, the Home Builders Association of Charlotte, and has been active in numerous other civic and professional organizations.

#### Schweidler Scholarship Awarded

Phifer P. Rothman of Winston-Salem has been named winner of the Joe Schweidler Memorial Scholarship for the year 1983. This scholarship was established by the Real Estate Commission in honor and memory of Mr. Schweidler, who served as Secretary-Treasurer of the Commission from 1960 until 1975.

The North Carolina Real Estate Educational Foundation, Inc. administers the scholarship, which is awarded to the student who attains the highest scholastic average in Course B of the REALTORS' Institute, and consists of the tuition for Course C of the Institute.

Mr. Rothman was first licensed as a real estate salesman in North Carolina in April, 1982 and earned his broker's license that same year. He is associated with Grubbs Real Estate in Winston-Salem.

The Real Estate Commission and the Real Estate Educational Foundation, Inc. congratulate Mr. Rothman on attaining this outstanding academic achievement. □

## LAND CONTRACTS

### Problems and Pitfalls

The ability of a real estate broker or salesman to arrange financing for a prospective homebuyer generally spells the difference between success and failure in a real estate transaction. During periods of "tight money," the agent's job becomes even more challenging, taxing his ingenuity and imagination to devise creative alternatives to traditional financing methods.

One such method which surfaces during tight money markets and lingers in the aftermath is the "land sales contract." Known by a variety of names (installment land contract, contract for deed, conditional sales contract, etc.), the land sales contract form of financing real estate purchases can be contrasted with mortgage loan financing in one important aspect: When a mortgage (or deed of trust) is used to secure a loan, the purchaser takes immediate title to the property purchased. But when property is purchased under a land contract, the buyer acquires title to the property only after all (or nearly all) of the purchase price has been paid.

This delayed acquisition of title can prove devastating to a purchaser who, after years of making installment payments, finds that the seller is unable to convey title to the property. (For example, where the seller has himself mortgaged the property after making the land sales contract and then defaulted on the loan.) Another risk inherent in land sales contracts is the *acceleration clause*. Under the typical acceleration clause, the entire unpaid purchase price becomes immediately due if the purchaser defaults in his payment. If the purchaser is unable to pay, he loses his right to purchase the property and forfeits

all the money he has paid prior to his default. This risk is worthy of every purchaser's careful consideration.

Although proponents of land contracts would argue that they frequently enable persons to become homeowners who could not otherwise qualify for conventional financing, nevertheless, the fact remains that the land sales contract method of purchasing real estate is fraught with potential problems and pitfalls for the uninformed purchaser. For this reason, the Real Estate Commission offers this advice to real estate brokers and salesmen who become involved in land contract sales:

1. Thoroughly explore all other forms of conventional financing before considering the land sales contract;
2. Insist that a knowledgeable real estate attorney prepare all land sales documents and that he carefully explains the terms and conditions of the contract to the parties;
3. Ensure that the contract is recorded immediately after signing by the seller (vendor) and buyer (vendee); and
4. Do not use the land sales contract as a means to circumvent a valid due-on-sale clause in an existing deed of trust.

Because of the serious threats posed to purchasers when land contract arrangements are carelessly or negligently handled, the Real Estate Commission will closely scrutinize the activities of any licensee involved in such transactions to assure that the licensee meets the high standards of care and competency required. □

### 1984 TRUST ACCOUNT SHORT COURSE REGISTRATION FORM

- |  |  |  |
|--|--|--|
| Charlotte                                  | Asheville                                  | Greensboro                                 |
| <input type="checkbox"/> Apr 30, 1:30 p.m. | <input type="checkbox"/> May 2, 2:00 p.m.  | <input type="checkbox"/> May 7, 1:30 p.m.  |
| <input type="checkbox"/> May 1, 9:30 a.m.  | <input type="checkbox"/> May 3, 8:30 a.m.  | <input type="checkbox"/> May 8, 9:30 a.m.  |
| Raleigh                                    | Greenville                                 | Fayetteville                               |
| <input type="checkbox"/> May 9, 9:30 a.m.  | <input type="checkbox"/> May 11, 9:30 a.m. | <input type="checkbox"/> May 14, 9:30 a.m. |
| Jacksonville                               | Wilmington                                 |  |
| <input type="checkbox"/> May 15, 9:30 a.m. | <input type="checkbox"/> May 16, 9:30 a.m. |  |

Check the date, morning or afternoon, under preferred location.

NAME: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

Return to N.C. Real Estate Commission  
P.O. Box 17100, Raleigh, NC 27619

# Broker Supervision of Salespersons

## RESPONSIBILITY UNDER CIVIL AND LICENSE LAW

Broker responsibility for supervision of salespersons is required under both civil and license law.

Under civil law the legal term for the relationship between a broker and salespersons is *respondeat superior*. This term arose from the common law and applies to the master-servant, employer-employee relationships. Under the doctrine of *respondeat superior*, an employer is held responsible or liable for the actions of his employees performed within the scope of their authority.

The civil law does not care whether the employer had knowledge of the negligent or wrongful actions of his employees. It is neither concerned with the fact that the employer took reasonable steps to prevent incidents leading to liability. If it can be shown that the employee was acting within the scope of his authority, then the employee's actions can be imputed to the employer.

The rationale behind the doctrine of *respondeat superior* is that the employer is in a better financial position to compensate an injured party than the employee. Rather than suing the employee who is likely to have limited assets, the doctrine of *respondeat superior* allows the third party to bring action against the "deep pocket" of the employer.

Broker liability under the license law is not nearly so extensive. Under the license law, except in trust account and closing activities, the broker must either have guilty knowledge of the wrongful conduct of the salesman or it must be shown that the broker did not adequately supervise (negligent supervision) his salespersons before the broker can be liable under the license law for acts of his salespeople.

Liability is clear when a salesperson performs wrongful acts with the knowledge of the broker. But liability is more difficult to establish when there is not showing of guilty knowledge. In cases where there is no guilty knowledge, the licensing agency must establish that the broker negligently supervised the salesperson in question. To defend himself against a charge of negligent supervision, the broker must show that he exercises reasonable supervision of his sales associates.

What constitutes reasonable supervision? Some of the factors that real estate regulatory agencies and

the courts have examined to make this determination include:

- 1) Broker's physical ability to supervise. How far is he or she from the office? Does the broker have another job? The physical and mental health of the broker is another factor.
- 2) The level of experience of the sales associate who committed the wrongdoing. The less experience, the more supervision would be required.
- 3) Has the broker contracted his right to supervise away? (E.g., by being a minority owner or non-owner of the brokerage business.)
- 4) Does the broker have a written office policy?
- 5) Guaranteed buy-outs—Does the broker monitor and define the office policy?
- 6) Does the broker hold staff meetings? How often?
- 7) Was there some corrective action taken by the broker after the wrongdoing by the sales associate was discovered?
- 8) What supervisory functions are performed by branch manager or office manager?

Also other brokers in the community may be asked to testify as experts concerning local practice or custom for real estate companies to further establish reasonable supervisory practices.

There are differences between civil and license law liability as far as broker supervision of sales associates is concerned. A broker should examine the factors listed above to see if his operation is falling down in a particular area and take steps to rectify the situation.

—Reprinted from

South Dakota Real Estate  
Board Newsletter

[NOTE: Under the rules and regulations governing North Carolina real estate licensees, a broker who certifies to the Real Estate Commission that he (she) will supervise a licensed real estate salesman shall actively and personally supervise the salesman in a manner which would reasonably assure that the salesman performs all acts for which a real estate license is required in accordance with the license law and Commission rules. Furthermore, the supervising broker must be the Broker-In-Charge of the real estate office at which the salesman works.] ☐

## EXAMINATION

(Continued from Page 1)

To acquaint license applicants with the new examination and other aspects of obtaining a real estate license, a comprehensive booklet entitled *Real Estate Licensing in North Carolina* was developed by the Commission staff and is furnished to all persons interested in obtaining North Carolina real estate licenses.

### Administration

The administrative functions associated with the new examinations will be performed totally "in-house" (in the Commission Office), which is believed to be unique for any occupational/professional licensing agency of comparable size in the country. Using the Commission's in-house computer, applicants are scheduled for examination and examination tickets are printed and distributed weekly. The computer then generates various rosters for use by the Commission staff and exam supervisors.

To enhance examination security, examination booklets are produced in the Commission Office using a high-speed copier/duplicator which assembles the booklets, inserts covers and staples them. The examination booklets, answer sheets, candidate rosters and other materials are then shipped by special courier to the exam center supervisors in the six cities previously listed.

The examinations are administered on the prescribed Saturday by the exam center supervisors, who are experienced test administrators under contract with the Commission. Immediately after the examination, all materials are picked up by special courier and delivered to the Commission the following Monday. The answer sheets are then scored by electronic scanner in the Commission Office and a statistical analysis performed on each examination question. Scores are then finalized and posted by computer to each applicant's file and computer-generated score reports are then sent to all scheduled applicants.

Passing candidates receive a "PASS" grade and failing candidates receive a numerical grade (the number of questions answered correctly) by major topic and overall. Failing candidates are also afforded an opportunity to review their examination in the Commission Office if they request an appointment within 30 days following the examination.

(Continued on Page 6)

## EXAMINATION (Continued from Page 5)

In addition, each school conducting a pre-licensing course(s) receives a monthly computer-generated report detailing the examination performance of their students compared to all candidates for that month.

### Benefits

Some of the benefits of the new examination program are:

- Examinations will be developed exclusively for North Carolina so that they will contain only questions appropriate for North Carolina real estate practice.
- North Carolina real estate practitioners and educators were actively involved in the development process to ensure that the examinations are "job-related."
- Candidates will receive in advance of their examination more specific information as to the content of the examination so that they can better prepare for it.
- Examination program is more closely coordinated with the pre-licensing education program so that applicants should be better prepared for the examination.
- Schools will receive better analytical data concerning the performance of their students on the licensing examination so that they can identify and correct any deficiencies in their courses.
- Failing candidates will receive with their score reports more detailed information as to their areas of weakness on their examination so that they can better prepare for future examinations.
- Failing candidates will be allowed to review their examinations so that they can identify precisely their areas of weakness in order to better prepare for future examinations.
- The "waiting time" between application filing and examination will be reduced, as well as the time between examination and score reporting, so that successful applicants will be able to receive their licenses sooner.
- The Commission should realize substantial financial savings, thus being able to defer for the immediate future any increases in fees to candidates.

### Conclusion

The Commission is confident that the new license examinations will represent a fair and accurate measurement of applicants' knowledge of essential real estate principles and practices. □

# DISCIPLINARY ACTION

The Real Estate Commission revoked the broker's license of WILLIAM F. AHMAD of Raleigh for failing to deposit tenant security deposits and rents in a trust or escrow account and for converting trust funds to his own use, resulting in a trust account shortage in excess of \$36,000.

The Commission revoked the broker's license of MARY G. AUTRY of Fayetteville due to her conviction in Superior Court of misdemeanor breaking and entering.

The Commission revoked the broker's license of CELESTINO P. CARUSO of Raleigh and Indian Beach for commingling earnest money with his business and personal funds and for converting such funds to his own use.

The Commission suspended for two years the broker's license of JOHN T. CORBIN of Asheville for failing to deposit earnest money in a trust or escrow account and for his failure to keep adequate trust account and transaction records and to produce such records for inspection by the Commission. The Commission also found that he had failed to communicate with a seller regarding the status of the seller's transaction.

The Commission revoked the broker's license of BETTY JEAN JEFF-

REYS of Durham for failing to deposit security deposits and rents in a trust or escrow account and for converting trust funds to her own use, resulting in a trust account shortage in excess of \$28,000.

The Commission suspended for two years (six months' active, eighteen months' probation) the broker's license of DWIGHT H. McALISTER of Chapel Hill for procuring an agreement from purchasers to pay loan discount points on a VA guaranteed loan in violation of VA regulations. The Commission also ordered McAlister to make restitution to the lender.

The Commission suspended for thirty days the broker's license of MELVIN F. RASHKIS of Chapel Hill for offering to exchange checks with a purchaser so that the purchaser would falsely certify to the VA he had not paid loan discount points on a VA guaranteed loan in violation of VA regulations. The Commission ordered Rashkis to make restitution to the lender.

The Commission revoked the broker's license of FRED D. WILSON of Rocky Mount due to his conviction in Superior Court of an offense involving moral turpitude which would reasonably affect his performance in the real estate business. □

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51,500 copies of this public document were printed at a cost of \$.08 per copy.

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REAL ESTATE COMMISSION  
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