

## NORTH CAROLINA REAL ESTATE COMMISSION

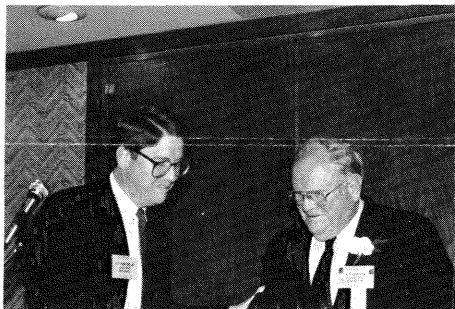
# Real Estate Bulletin

Volume 16

1985

Number 3

## CARLTON INSTALLED AS NARELLO PRESIDENT



A. P. Carlton, Jr. (left) congratulates father after installing him as NARELLO President.

North Carolina Real Estate Commission Vice Chairman A. P. "Red" Carlton has been installed as President of the National Association of Real Estate License Law Officials (NARELLO) at the Association's Annual Conference in Vancouver, British Columbia on October 16. As President of NARELLO, Mr. Carlton will during the coming year preside over the Association's membership consisting of governmental real estate licensing officials and administrators from the various states and terri-

tories of the United States and the Canadian Provinces.

Mr. Carlton has been a member of the North Carolina Real Estate Commission for more than a decade, serving as Chairman in 1971-72 and again in 1982-83. He is a Past President of the Greensboro Board of REALTORS and the North Carolina Association of REALTORS, and was named state REALTOR of the Year in 1969.

He and his wife Katherine reside in Greensboro. □

## SALESMEN RECEIVE NEW LICENSE CERTIFICATES

See Page 4 for New Transfer Form

On October 29 the Real Estate Commission mailed new license certificates (wall licenses) to the state's 16,300 real estate salesmen.



Records Clerk Naomi Cottle (left) and Assistant License Clerk Mildred Combs with boxes of new license certificates ready for mailing.

Issuance of the revised certificates was necessary due to recent changes in the procedure which salesmen must follow when associating with or relocating to a new broker-in-charge. Under the new procedure, salesmen are given possession of their licenses when they are not engaged in the real estate business; under the previous procedure, the salesman's license was returned to the Commission when not in use.

In addition, a new form has been developed for use by brokers-in-charge in notifying the Commission when a salesman is under the broker-in-charge's supervision. A copy of this new form has been reproduced on page 4 of this **Bulletin**. Brokers-in-charge should make copies of this form for their future use, or forms can be obtained from the Commission office.

## New Commission Employees



Ms. Robin Hammond has been employed as the Commission's *Legal Information Officer*. Her duties include answering inquiries from consumers and licensees and assisting the other members of the Commission's legal staff.

A native of Wilson, Robin graduated magna cum laude from East Carolina University in 1979. She obtained her J.D. degree in 1983 from the University of North Carolina School of Law and was admitted to the North Carolina Bar in 1984.

Before joining the Real Estate Commission, Robin was a Foreclosure Officer and Legal Specialist with Cameron-Brown Mortgage Bankers in Raleigh and was previously a Research Assistant for NC Appeals Court Judge John Webb. □



Mr. Charles S. Carter has joined the Commission's Investigative Staff as a *Real Estate Investigator*, specializing in time share investigations and inspections.

Charles brings to the position an extensive law enforcement background. He was a Deputy Sheriff in Cumberland County, a Patrolman with the Raleigh Police Department, a Highway Patrolman, and most recently a Detective Sergeant in the Narcotics and Vice Division of the Lee County Sheriffs Department. He attended Methodist College and has completed numerous law enforcement courses.

Charles and his wife Janet and their family reside in Sanford. □

# REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate License 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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James G. Martin, Governor

### COMMISSION MEMBERS

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..... Dep. Legal Counsel  
Robin Hammond ..... Legal Inf. Off  
Larry A. Outlaw ... Education Director  
F. Michael Hughes ..... Asst. Ed. Dir.  
Mary Frances Whitley ..... Fin. Officer

### EXAM RESULTS

EXAMINATION—August 1985		
	Passed	Failed
Brokers	73	80
Salesmen	464	298
EXAMINATION—September, 1985		
	Passed	Failed
Brokers	129	73
Salesmen	701	414
EXAMINATION—October, 1985		
	Passed	Failed
Brokers	116	96
Salesmen	510	289

# FROM THE MAILBAG

## Response to a Recent Inquiry Regarding Presentation of Offers After Seller Has Accepted Offer

Dear \_\_\_\_\_:

You have inquired as to whether a real estate agent must continue to present offers to purchase to a seller who has already accepted an offer.

In this regard, the Real Estate License Law requires real estate agents to deliver offers to purchase real estate to sellers within a "reasonable time" which the Real Estate Commission has defined as not later than five days after the signing of the offer. Neither the Real Estate License Law nor the Commission's Rules relieve the agent of further responsibility for presenting offers upon the acceptance of an offer by a seller.

Aside from this legal requirement, there appears to be sound rationale for continuing to present offers; namely, that in the event the sale is not consummated due to the offeror's failure or inability to satisfy some material term, condition or contingency of the offer, then the seller (who is usually the agent's client) would benefit by having accepted a "backup offer" committing a second buyer to the purchase of his or her property.

However, the agent must make it perfectly clear to the seller that although the "backup contract" may be more advantageous to the seller than the primary contract, nevertheless it must remain dormant unless and until the primary sales contract has been breached or is otherwise terminated. Likewise, persons who make "backup offers" must clearly understand that the primary contract will take precedence over any "backup contract" and will not become operative until the primary contract is no longer pending.

Of course, if after accepting an offer a seller instructs the agent not to solicit any further offers, then the agent should follow his principal's wishes. However, if a subsequent offeror insists on making a written offer, the agent should present the offer to the seller to be rejected.

Yours very truly,

NORTH CAROLINA REAL ESTATE COMMISSION

(Continued on Page 3)

### NATIONAL LICENSING BOOKLET AVAILABLE

The National Association of Real Estate License Law Officials (NARELLO) has prepared an information booklet on real estate licensing in the United States and Canada which can now be purchased by the public.

The publication, *Digest of Real Estate License Laws*, is a collection of reports and statistical data compiled by state real estate licensing officials and administrators covering such topics as ■ Licensing Requirements in the Various States ■ Reciprocity and Nonresidency Requirements ■ Educational Programs and Requirements ■ Subdivided Lands and Time Share Data ■ Legislation Affecting Licensees.

It is considered by NARELLO to be "A valuable reference guide of license law statistics for real estate executive officers, educators, license law officials, and all those who deal in real estate related activities."

For information concerning the just-released current edition of the *Digest*, contact: NARELLO, Commercial Security Bank Tower, 50 South Main Street, Suite 600, Salt Lake City, Utah 84144 (Phone: 801/531-8202).

# YOU SNOOZE—YOU LOSE!

By Blackwell M. Brogden, Jr.  
Deputy Legal Counsel

## Response to a Recent Inquiry Regarding Financing Terms In Offers to Purchase

Dear \_\_\_\_\_:

You state in your recent letter that it is the practice of some real estate agents to insert the term "Prevailing Rate" in those provisions of Offers to Purchase and Contract regarding the interest rate which purchasers (offerors) are willing to pay and the discount points which purchasers or sellers are willing to pay. You have inquired as to the Real Estate Commission's position regarding the propriety of using this general term in lieu of a more specific statement as to the maximum interest rate and discount points which the parties are willing to pay.

In this regard, it is the position of the Real Estate Commission that an offer to purchase real estate should set forth in detail the terms of the purchaser's offer and the seller's acceptance. While the validity and enforceability of a sales contract might not be jeopardized by a provision to the effect that the interest rate on the purchaser's loan and the discount points payable by the seller or purchaser shall not exceed the "Prevailing Rate", nevertheless the lack of specificity in describing these material conditions of the offer and acceptance could lead to controversy and ill feeling between the parties and the agent should the interest rate and/or discount points substantially exceed those anticipated by the parties at the time the sales contract is executed.

For this reason, the Commission feels that the offer and acceptance should set forth the maximum interest rate and discount point amount which the parties would be willing to pay recognizing that the actual interest rate and discount points oftentimes cannot be accurately predicted at the time the offer is made. In doing so, purchasers could be better assured that their future monthly mortgage payments will be within acceptable and affordable limits and the party responsible for paying the loan discount points will be better assured as to the maximum amount of funds needed to close the transaction.

Yours very truly,

NORTH CAROLINA REAL ESTATE  
COMMISSION

In two companion cases which were recently decided by the North Carolina Supreme Court, the issue of multiple offers/counteroffers was addressed. The fact situation was as follows: A prospective purchaser made an offer to purchase certain real estate. The seller rejected the purchaser's offer but made a counteroffer which the purchaser did not accept. A second purchaser then made an offer to purchase the property on terms substantially the same as the seller's counteroffer. This offer was accepted by the seller. When the seller's agent informed the first purchaser that the property had been sold, the purchaser protested, believing the property to be "off the market" until he had made up his mind or at least until the acceptance date contained in his original offer. But the seller's agent informed him "You snooze you lose; the property has been sold."

Two lawsuits ensued (Normile v. Miller and Segal v. Miller, 313 N.C. 98 [1985]) which were ultimately decided by the North Carolina Supreme Court. (In analyzing the cases, the Supreme Court relied in large part on the Real Estate Commission's textbook, *North Carolina Real Estate for Brokers and Salesmen*.) The court determined that since the purchaser's offer had been rejected by the

seller, the acceptance date shown in the purchaser's offer did not apply, and therefore, the seller remained under the common law rule that "... an offer is generally freely revokable and can be countermanded by the offeror (in this case, the seller) at any time before it has been accepted by the offeree (in this case, the purchaser)."

The court further stated: "Notice of the offeror's revocation must be communicated to the offeree to effectively terminate the offeree's power to accept the offer. It is enough that the offeree receives reliable information, even indirectly, that the offeror had taken definite action inconsistent with an intention to make the contract." The statement of the agent, "You snooze, you lose; the property has been sold", was sufficient to notify the purchaser that the counteroffer had been revoked; therefore, the purchaser's later attempt to accept it amounted only to a new offer which was rejected because the property had already been sold.

### CAVEAT

Agents involved in multiple offer/counteroffer situations should be extremely careful to ensure that each offer or counteroffer is properly presented, considered, rejected or accepted, and that the parties are promptly notified of such action.

## NEW CASH REPORTING REQUIREMENTS

Did you know that businesses (including real estate companies) must notify the Internal Revenue Service when they receive more than \$10,000 in cash in one or more related transactions?

To assist in reporting these transactions, the IRS has developed a form (Form 8300) which must be completed and filed with the IRS not later than 15 days after the transaction has occurred. A copy of the form must also be maintained by the business for five years.

In addition, a written statement must be provided to the person from whom the cash is received. This may be accomplished by giving him or her a copy of the Form 8300.

Persons who fail to report such transactions or to furnish the payer the required statement are subject to civil penalty and/or criminal prosecution.

Persons desiring further information about these new requirements should contact the nearest IRS office. □

<b>REGISTRATION FORM</b>			
<b>TRUST ACCOUNT SHORT COURSE</b>			
McKimmon Center, Raleigh, N.C. (All Classes Begin at 1:00 p.m.)			
<input type="checkbox"/> January 20	<input type="checkbox"/> February 18	<input type="checkbox"/> March 17	<input type="checkbox"/> April 14
Name: _____		Phone: _____	
Address: _____		City: _____	
Mail to: N.C. Real Estate Commission, P.O. Box 17100, Raleigh, N.C. 27619-7100, Attn: Ms. Hamm			



North Carolina Real Estate Commission  
 P.O. Box 17100, Raleigh, N. C. 27619 • Phone (919) 733-9580

COMMISSION USE

**ACKNOWLEDGEMENT  
 RECORD CHANGE**

Date \_\_\_\_\_  
 N.C. REAL ESTATE COMMISSION

**SUPERVISION OF SALESMAN  
 NOTIFICATION**

Instructions

1. After carefully reading these instructions, this form must be properly completed and signed by the salesman and the Broker-In-Charge of the office where the salesman will be employed. *(The Broker-In-Charge should retain a copy of this completed form for his/her files.)*
2. **The salesman named in this form may begin working as a real estate salesman under the supervision of the Broker-In-Charge when the Broker-In-Charge has either mailed or delivered this properly completed form to the Real Estate Commission. *(No fee is required.)***
3. The Real Estate Commission will send the Broker-In-Charge a written Acknowledgement confirming that this form has been received and accepted. *(The Broker-In-Charge should retain the Acknowledgement for his/her files.)* **If the Broker-In-Charge has not received the Acknowledgement by 30 calendar days after the date entered below on this "Supervision of Salesman" form, the salesman must immediately cease any further activity for which a real estate license is required until the Acknowledgement has been received. *(Brokers-In-Charge are advised to contact the Records Department at the Commission Office if the Acknowledgement has not been received by 25 days after the date entered on this form.)***
4. **The salesman's real estate license certificate is the property of the salesman.** The license certificate must be prominently displayed in the office of the Broker-In-Charge while the salesman is under the supervision of the Broker-In-Charge, and must be returned to the salesman *(not the Real Estate Commission)* upon the termination of his/her association with the Broker-In-Charge or firm.
5. **Upon termination of the salesman's association with the Broker-In-Charge or firm, the Broker-In-Charge must immediately notify the Real Estate Commission in writing,** giving the salesman's *current residence address and date of termination.* The Commission will furnish the Broker-In-Charge and salesman a written Acknowledgement confirming that the notification has been received and that the Broker-In-Charge has been released from further supervisory responsibility over the salesman's real estate activities. *(The Broker-In-Charge should retain this Acknowledgement for his/her files.)*

TYPE OR PRINT IN INK

**TO BE COMPLETED BY SALESMAN:**

I hereby advise the North Carolina Real Estate Commission that I am (as of the date shown below) engaged in the business of a real estate salesman under the supervision of the Broker-In-Charge listed below. I further certify to the Real Estate Commission that I shall engage in acts which require a real estate license only while under the active, personal supervision of said Broker-In-Charge.

SIGNATURE OF SALESMAN \_\_\_\_\_

SALESMAN'S FULL NAME \_\_\_\_\_ LIC. # \_\_\_\_\_

RESIDENCE ADDRESS \_\_\_\_\_

**TO BE COMPLETED BY BROKER-IN-CHARGE:**

I hereby certify that the above salesman is (as of the date shown below) engaged in the business of a real estate salesman under my active, personal supervision and will remain under my supervision until I otherwise give written notice to the Real Estate Commission. I further certify that thirty (30) calendar days following the date shown below, such salesman shall discontinue any and all licensed activity in the event that I have not received from the Commission written acknowledgement of the receipt and acceptance of this form.

SIGNATURE OF BROKER-IN-CHARGE \_\_\_\_\_

BROKER-IN-CHARGE'S FULL NAME \_\_\_\_\_ LIC. # \_\_\_\_\_

BUSINESS NAME \_\_\_\_\_

BUSINESS STREET ADDRESS \_\_\_\_\_

BUSINESS MAILING ADDRESS \_\_\_\_\_

DATE: \_\_\_\_\_

## DISCIPLINARY ACTION

*Penalties for violations of the Real Estate License Law and Commission Rules and Regulations vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.*

**JAMES A. BAYLISS and JBA-LEISURE MARKETING, INC. (Virginia)**—The Commission suspended Mr. Bayliss' broker's license and the corporate real estate broker's license of JBA-Leisure Marketing, Inc. for two years effective October 1, 1985. The Commission found that Mr. Bayliss as principal broker and chief executive officer of JBA-Leisure Marketing, and JBA-Leisure Marketing, Inc. acted together in causing Resorts Mailing, Ltd. to conduct a mail solicitation to attract prospective purchasers to the Beach Harbour time share project which solicitation was deceptive in nature, in that its offering of a vacation trip to Mexico failed to disclose that a \$150 deposit was required and that air fare was provided for only one person although two persons were required to attend the sales presentation. The Commission also found that salesmen and representatives of JBA-Leisure Marketing, Inc. knowingly failed to disclose the true details of its solicitation to prospective purchasers until after they had completed their sales presentation.

### NOTICE

Federal authorities are seeking information as to the whereabouts of JOHNNY RAY KNIGHT, an escapee from Federal custody, convicted of mail fraud and fraud by wire.

Knight is believed to be contacting unsuspecting real estate agents to assist him in various types of real estate deals.

Federal authorities describe Knight as a white male, approximately 6'2" tall, weighing 165 lbs., with blue eyes and graying blond hair.

Anyone with information as to the whereabouts of Knight should contact Deputy United States Marshal Ed Mitmann (919) 376-5354. □

**AVIS L. DUBE (Fayetteville)**—By Consent, the Commission revoked Ms. Dube's broker's license effective September 1, 1985. The Commission found that Ms. Dube had failed to maintain deposit slips and receipts for her two trust accounts and commingled the funds of others with her own funds by depositing her own funds in her trust accounts. The Commission also found that Ms. Dube had remitted to a property owner checks for rental payments which were dishonored due to insufficient funds, and that she charged the property owner for expenses in connection with the management of the owner's property but then failed to promptly pay the persons to whom the money was owed. The Commission also found that Ms. Dube had failed to provide a closing statement or the sales proceeds to a seller in a sales transaction, and in a separate sales transaction failed to promptly pay an expense of the transaction which she had agreed to pay.

**JASIA G. DUDKO (Gastonia)**—The Commission revoked Ms. Dudko's salesman's license effective October 15, 1985. The Commission found that Ms. Dudko had acted in the capacity of a real estate broker while holding a salesman's license in that she managed properties, collected rents and received compensation for her services without the knowledge or consent of her broker-in-charge. The Commission also found that Ms. Dudko failed to deposit rents in a trust account and failed to remit rents to property owners in two separate rental transactions.

**JEAN C. FERGUSON and BILLY GOAT MANAGEMENT, INC. (Boone)**—By Consent, the Commission suspended Ms. Ferguson's broker's license and the corporate real estate broker's license of Billy Goat Management, Inc. for one year effective November 1, 1985, of which thirty

days is to be active and the remaining eleven months on probation. The Commission found that Ms. Ferguson as president, principal broker and broker-in-charge of Billy Goat Management, Inc. failed to deposit and maintain the funds of others in a properly designated trust or escrow account and failed to properly account for and maintain adequate records regarding such funds. The Commission noted, however, that such actions were the result of mismanagement rather than intentional wrong-doing and that no principal, client or customer had been deprived of their funds.

**CARL W. HAMM, JR. and CENTURY 21-CARL HAMM REALTY, INC. (Shelby)**—By Consent, the Commission revoked Mr. Hamm's broker's license and the corporate real estate broker license of Century 21-Carl Hamm Realty, Inc. effective October 15, 1985, which licenses may be considered for reinstatement after October 15, 1986. The Commission found that Mr. Hamm while doing business as Century 21-Carl Hamm Realty, Inc. failed to pay mortgage payments in a timely and orderly manner on property managed by him for others, failed to deposit and maintain the funds of others in a trust account, and failed to maintain and make available to Commission representatives adequate records regarding funds held in trust for others.

**KENWYN N. (BILL) JOHNSON (Laurinburg)**—By Consent, the Commission suspended Mr. Johnson's broker's license for eighteen months effective October 1, 1985. Sixty days of the suspension is to be active and Mr. Johnson was placed on probation through December 31, 1986 on condition that he complete a Commission-approved course in Real Estate Finance by June 1, 1986. The Commission found that

*(Continued on Page 6)*

### COMMISSION ENJOINS TIME SHARE PROJECT

The Real Estate Commission has obtained a preliminary injunction against the Avery County time share project, **Westridge at Sugar**, prohibiting further sales of time shares at the project. The injunction was granted following a law suit filed by the Commission in Wake County Superior Court against the project's developer, Sugar Mountain Development Corporation, which consented to the injunction.

The Commission had previously revoked the developer's authority to sell time shares at the project when the Commission determined that the project was under the control of persons which the Commission found were unqualified to engage in the time share business. Under the terms of the injunction, the developer and others cannot offer their time shares for sale to the public until the issues raised in the law suit have been resolved. □

# DISCIPLINARY ACTION

Mr. Johnson, without the knowledge and consent of the purchaser, inserted his (Mr. Johnson's) name as owner on the title certificate to a mobile home which he had contracted to sell to the purchaser, and then used the mobile home as collateral to secure various loans. The Commission also found in a separate transaction that Mr. Johnson failed to record the deed and deed of trust to property sold by him, and that he failed to insure a mobile home situated on the property, which was subsequently damaged by a tornado to the injury and detriment of the purchaser. The Commission also found that Mr. Johnson had contracted to sell a mobile home and lot to a purchaser without disclosing that the property was subject to an existing lien, and that he failed to record the deed and deed of trust to the property. The Commission noted, however, that Mr. Johnson subsequently entered into agreements with the injured parties to resolve their complaints.

**CHARLES J. LACKEY (Greensboro)**—The Commission suspended Mr. Lackey's broker's license for one year effective November 1, 1985 of which six months is to be active and two years on probation on condition that he complete a Commission-approved course in Real Estate Fundamentals by May 1, 1986. The Commission found that Mr. Lackey in his capacity as broker-in-charge of Foxfire Interval Ownership Resort Program, First Resort Properties, Inc. and First Resort Sales, Inc. permitted unlicensed persons to sell time shares and permitted a sales promotion program to be conducted wherein false promises were made regarding the awarding of gifts.

**WILLIAM B. MCDOWELL (Cary)**—By Consent, the Commission revoked Mr. McDowell's broker's license effective October 1, 1985, which license may be considered for reinstatement after October 1, 1986. The Commission found that Mr. McDowell as the seller of a house, had made false statements to a lender by entering into a separate sales contract with a purchaser providing for secondary financing terms without the lender's knowledge or consent.

**RESORT DEVELOPMENT ENTERPRISES, INC. (Boone)**—The Commission revoked the corporate real estate broker's license of Resort Development Enterprises, Inc. effective November 1, 1985 for employing and paying sales commissions to persons not licensed as real estate brokers or salesmen who were engaged in selling time shares at the projects Frontier Village I and Frontier Village II.

**BONNIE H. SELPH (Boone)**—The Commission suspended Mrs. Selph's broker's license for 60 days effective September 15, 1985 and placed her on probation through September 15, 1986. The Commission found that Mrs. Selph failed to account for and remit within a reasonable time money belonging to others; failed to review or reconcile her trust account records for over three years; failed to properly deposit funds in her trust account; failed to maintain adequate records of trust funds and to retain required trust account records for a three-year period; and commingled the money of her principals with her own funds.

**CARL JASON SELPH (Boone)**—The Commission suspended Mr. Selph's brok-

er's license for 90 days effective November 15, 1985 and placed him on probation through November 15, 1986. The Commission found that Mr. Selph had willfully misrepresented to a purchaser that the purchaser had forfeited her earnest money deposit when, in fact, the seller had not claimed a forfeiture. The Commission also found that he had failed to remit the earnest money deposit to the purchaser within a reasonable time and that he had claimed the deposit for himself when he had no contractual right to the funds.

**GEORGE R. THOMAS (Bakersville)**—By Consent, the Commission reprimanded Mr. Thomas effective September 24, 1985 for negligently advertising that certain property which he was offering for sale was owned by a partnership when, in fact, the property was owned in common tenancy by Mr. Thomas and another individual. The Commission also found that Mr. Thomas granted a life estate in the entire property to one of his relatives and that in presenting an offer to purchase the property to the co-owner of the property which provided for payment of a commission to Mr. Thomas, he negligently failed to disclose that the company making such offer was under the control of his employee and business associate.

**JOY F. VICKERS (Boone)**—The Commission suspended Ms. Vicker's broker's license for six months effective November 1, 1985 for allowing a corporate real estate broker, Resort Development Enterprises, for which she was serving as principal broker and broker-in-charge to employ and pay persons not licensed as real estate brokers or salesmen to act as time share salesmen.

**BROKERS IN  
CHARGE  
See Page 4  
For New  
SUPERVISION  
OF SALESMAN  
FORM**

(Make Copies for  
Your Future Use)

NORTH CAROLINA  
REAL ESTATE COMMISSION  
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