

Why fill out the Seller Property Disclosure Form



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What information needs to be disclosed to real estate buyers?

The Seller Property Disclosure form

- The Seller's Property Disclosure is the primary method of disclosing information to buyers and is a very important form in the process for the selling and buying of real estate. Selling and buying brokers should discuss the importance of this form with their respective clients. This pamphlet is mainly focused toward the seller, but applies to the buyer point of view as well.
- The main goal of the Seller's Property Disclosure is two-fold.
 - Inform the buyer about any adverse material facts issues, problems, or defects about the property (past and potentially future) so they can make an informed purchasing decision. The buyer must understand a seller's disclosure form does not replace the need for a thorough home inspection.
 - This required form protects the Seller from legal action from the buyer concerning hidden problems and issues with the property after the transaction is complete, provided the seller was totally open and honest in their disclosures. Any dishonesty or deceit can allow the buyer to sue the seller for damages.

Seller

- Sellers are legally required to disclose these adverse material factors:
 - Facts affecting title
 - Physical conditions
 - Environmental hazards
 - Latent defects (hidden flaws, weakness, or imperfections which cannot be discovered by reasonable inspection)
 - Any non-permitted improvements made. Be aware the buyer's inspector will search through government records for proper permits as part of his inspection.
- Sellers should realistically consider the primary purpose of this form as a form of insurance to protect their backside. If the seller discloses an adverse material factors issue, then the buyer can't come back later to force seller to pay for expensive repairs or for financial gain claiming they weren't told. A seller cannot get in trouble for over-disclosing, but can be held responsible for under-disclosing.
- The form should only be filled out by the seller and not by the listing broker. This should be filled out at the same timeframe when putting the property on the market. Everyone knows something about their property. All known deficiencies must be disclosed, even if selling "as-is".
 - The seller property disclosure form can be loaded it into the MLS as an attachment to the listing. It is the buyer's responsibility to read the MLS attached documents. Additional forms/sheets, explanations, attachments, and pictures can be added to the disclosure form as needed.
 - If the form is not in the MLS, then it needs to be provided to the potential buyer within the number of days (typically 3-5 days) as stated in their offered contract to buy or sell (CBS) para 3(10).
- At the time of any offer, the seller should review the disclosure form for currency and provide any new issues. If the seller discovers an adverse material fact after the CBS is signed (e.g., replace a leaking hot water heater, or the roof caved in), they it must be disclosed to the buyer in a timely manner. Buyers have the right to terminate the contract within 5 days of the seller's notification of any new disclosures.

- Some sellers want to drag their heels about filling out the seller disclosure forms, erroneously believing they don't want to tell what is wrong with their house. *"If I tell the buyer, then they won't buy my house"*. This belief could easily put you in the legal hot seat. The simple fact is if you don't disclose, then you could be paying a lot of money to have the problem or issue repaired, plus additional legal costs.
 - Sellers should fill out the form as comprehensive as possible in order to eliminate future potential legal issues. Even if the sellers are selling "as-is", all blemishes must be disclosed.
 - If a seller has had the property for 20 years, and they don't disclose anything, the court will most probably side with the buyer. It's hard to imagine an owner owning a property for so long and not knowing of **any** issues with their property.
 - If a buyer's inspection was previously performed and the deal did not go through; any issues identified during the inspection and passed to the seller needs to be included on the disclosure. If the seller disagrees with a specific inspection item, put in a comment of why you believe the comment is in error. This is better than omitting it.

Buyers

- It is up to the buyer to read attachments within the MLS, documents given to them via their buyer broker, perform their own due diligence, and have the property inspected.
- If the seller doesn't provide a disclosure form, or provides a blank form, ensure the buyer agent makes them aware of their legal requirement and failure repercussions.

Investors

- Investors typically don't want to fill out this form "since they have not lived there", but this will not wash in court. The investors have conducted their own personal inspections and probably had professional inspections. This will leave them totally accountable. Investors will have receipts for repairs they conducted for inclusion in their taxes. Everyone knows something about the property and should make comments on the seller disclosures.

Estate beneficiaries or personal representative.

- Estate sellers still have a responsibility to fill out the form as much as possible. They may have not lived there, but they have walk and worked on the property; and identified items needing obvious repair, replacement, or other issues.

Agent's requirements

- **Listing and buyer agents are legally obligated to disclose adverse material facts to all parties involved in the transaction.** If the seller tells their listing agent not to disclose something, the listing agent has a legal responsibility to disclose the information to all parties, and also inform their managing broker of the seller's attempt to hide adverse material facts.

Stigmatized Properties

What is a stigmatized property?

- A stigmatized property is a place where buyers may shun away from for a variety of reasons: death of an occupant, murder, suicide, infamous events, notorious/evil criminals, or even simply if the place is locally believed to be haunted. Each state has different rules on what constitutes stigmatized and what is authorized and required to be disclosed.
- In Colorado, there are a few instances when the seller is not required to disclose what some people might consider to be adverse information. These include murder, suicide, felonious act, or a previous resident with AIDS resided within the house. A seller has the final right to determine if they want any of this information revealed. The seller's agent cannot reveal anything without the seller's approval or permission and typically want an email from the seller stating this. A buyer's agent can and should reveal any information he is able to come up with concerning the property to their buyer.
- If I was listing a potentially stigmatized property, I would discuss the issue with my client to consider them giving me permission to verbally disclose to the buyer/buyer agent. My goal is to minimize the information and conduct story control. In this day and age of the electronic access, buyers will always probably find out, either from the internet, or more often than not from a talkative neighbor. After going under contract, I would call the buyer's agent, asking to meet with them and the buyers, and tell them we have something we would like to talk to them about "just to be totally open". We will appear above board, open, and honest. For example if there was a murder/suicide, I would tell them a condensed version of the story telling them there was a terrible tragedy in the house (but not which rooms); discussing the mental illness of the individual, creating a heartfelt loss story, avoiding any gore, and giving only limited generic details.

Colorado Revised Statutes Title 38. Property Real and Personal
§ 38-35.5-101. Circumstances psychologically impacting real property—
no duty for broker or salesperson to disclose

(1) Facts or suspicions regarding circumstances occurring on a parcel of property which could psychologically impact or stigmatize such property are not material facts subject to a disclosure requirement in a real estate transaction. Such facts or suspicions include, but are not limited to, the following:

- (a) That an occupant of real property is, or was at any time suspected to be, infected or has been infected with human immunodeficiency virus (HIV) or diagnosed with acquired immune deficiency syndrome (AIDS), or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or
- (b) That the property was the site of a homicide or other felony or of a suicide.

(2) No cause of action shall arise against a real estate broker or salesperson for failing to disclose such circumstance occurring on the property which might psychologically impact or stigmatize such property.

Source: <https://codes.findlaw.com/co/title-38-property-real-and-personal/co-rev-st-sect-38-35-5-101.html>

Methamphetamine house

- Living in meth houses (contaminated by either someone who smoked or manufactured meth) is dangerous to the health of all who live there. This contamination can last for years and years. The possible long-term health problems are just not all known yet. The health-related short-term issues are extensive and include:
 - Babies unable to gain weight
 - Constant sickness
 - Inability to sleep
 - Methamphetamine can show up in blood work without any substance abuse history.
 - Irritation
 - Migraines
 - Respiratory difficulties
 - Sinus problems which require surgery
 - Skin burns

2021 Colorado Code Title 38 - Property - Real and Personal
Article 35.7 - Disclosures Required in Connection With
Conveyances of Residential Real Property
§ 38-35.7-103. Disclosure - Methamphetamine Laboratory - Abridged

A buyer of residential real property has the right to test the property for the purpose of determining whether the property has ever been used as a methamphetamine laboratory.

Tests conducted pursuant to this section shall be performed by a certified industrial hygienist or industrial hygienist, as defined in *section 24-30-1402, C.R.S.*, and in accordance with the procedures and standards established by rules of the state board of health *section 25-18.5-102, C.R.S.* If the buyer's test results indicate that the property has been contaminated with methamphetamine or other contaminants, and has not been remediated to meet the standards established by rules of the state board of health. The buyer shall promptly give written notice to the seller of the results of the test, and the buyer may terminate the contract. The contract shall not limit the rights to test the property or to cancel the contract based upon the result of the tests.

The seller shall have 30 days after receipt of the notice to conduct a second independent test. If the seller's test results indicate that the property has been used as a methamphetamine laboratory but has not been remediated to meet the standards established by rules of the state board of health, then the second independent hygienist shall so notify the seller.

If the seller receives a notice and does not elect to have the property retested, then an illegal drug laboratory used to manufacture methamphetamine has been discovered. Nothing in this section prohibits a buyer from purchasing the property and assuming liability. If, on the date of closing, the buyer provides notice to the department of public health and environment and governing body of the purchase and assumption of liability and if the remediation is completed within 90 days after the date of closing.

Except as specified, the seller shall disclose in writing to the buyer whether the seller knows that the property was previously used as a methamphetamine laboratory. A seller who fails to make a disclosure required by this section at or before the time of sale and who knew of methamphetamine production on the property is liable to the buyer for:

- a. Costs relating to remediation of the property according to the standards established by rules of the state board of health;
- b. Costs relating to health-related injuries occurring after the sale to residents of the property caused by methamphetamine production on the property; and
- c. Reasonable attorney fees for collection of costs from the seller.

A buyer shall commence an action within 3 years after the date on which the buyer closed the purchase of the property where the methamphetamine production occurred. If the seller becomes aware that the property was an illegal drug laboratory and remediates the property in accordance with established standards, and receives certificates of compliance then:

- a. The seller shall not be required to disclose that the property was used as a methamphetamine laboratory to a buyer; and
- b. The property is no longer eligible for inclusion in any government-sponsored informational service listing properties that have been used for the production of methamphetamine.

History. Source: L. 2006: Entire section added, p. 712, § 1, effective January 1, 2007. L. 2009: (2)(a) amended, (SB 09-060), ch. 140, p. 601, § 3, effective April 20. L. 2013: (2)(c) and (4) amended, (SB 13-219), ch. 293, p. 1570, § 2, effective August 7.

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- Most buyers find out from the neighbors after they move in they may have bought a contaminated home. The first step is to talk to neighbors. If after the sale, the buyers typically want to sue for recourse and remediation. Real estate disclosure law is based on previous knowledge. Honestly, most of the time, a successful case can't be made because it is not clear who created the contamination or who had previous knowledge of it. There is often a string of occupants between the individual who was the meth user, the manufacturer, and the last seller.
- According to the website for the lawyers Robinson & Henry – The question is if the seller must disclose if the house in question was a Meth house? The answer is both “Yes” and “No”.

Lawyers Robinson & Henry - Disclosure of methamphetamine in real estate

“If the seller knows there has been meth on the property that has not been remediated, even the smallest amount of meth, then, “Yes” they must disclose that in the real estate transaction. The State of Colorado labels a house a meth lab if there are 0.05 grams in a 3-and-half-inch section in a home. Now, to the “No” portion of reporting. If the seller or previous owner has since cleaned up the meth problem and they used a certified meth cleanup business, then, no, the seller does not have to disclose meth on a property. When meth is remediated from a property, the state no longer considers it a meth lab.”

<https://www.robinsonandhenry.com/colorado/real-estate/disclose-meth-on-a-property/>

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- It is strongly suggested for a potential buyer to conduct a meth test as part of the inspection process to see if property has been contaminated. If these tests are positive, the buyer is required to “promptly” notify the seller. It will then fall to the seller to perform the mitigation. The seller has 30 days to hire an Industrial Hygienist who may conduct more in-depth tests to confirm the first test, but they cannot use the data from the second test to refute the first test. There is a simple self-test kit for approximately \$40, and a laboratory processed self-test kit for \$50. Some testing products will only conduct a basic screening to detect the presence of contamination, but not the level within a home. There is a more comprehensive test and can cost approximately \$400. Another firm will add approximately \$1,400 to \$2,200 to test and provide the levels. Just to give you an idea of the costs of remediation, one home flipper had to spend about \$26,000 on meth testing, remediation, and retesting to ensure it was safe.
- When someone smokes meth, this residue can linger on any surface in the area smoked within the house. When someone cooks or creates meth, the intensity of the residue is dramatically higher and even more dangerous. Meth is created by combining dangerous chemicals and cutting them with other dangerous substances:
 - Ephedrine/pseudoephedrine (over-the-counter decongestants in cold medications/weight loss items).
 - Acetone (found in nail polish remover & paint thinner)
 - Anhydrous ammonia (found in fertilizer)
 - Antifreeze
 - Cat litter
 - Ether
 - Freon
 - Gasoline
 - Hydrochloric acid (found in fertilizer & dyes)
 - Iodine crystals or flakes
 - Isopropyl alcohol (found in rubbing alcohol & various cleaning products)
 - Lithium (found in batteries)
 - Methanol (found in paints, varnishes, & adhesives)
 - MSM (nutritional supplement)
 - Red phosphorus (found in matches & road flares)
 - Rock salt
 - Sodium hydroxide (also called lye)
 - Sodium metal (found in table salt & baking soda)
 - Sulfuric acid (found in drain cleaner)
 - Toluene (found in brake cleaner)
 - Trichloroethane (found in gun cleaner)
- There is a website of DEA meth labs bust history. The main problem with this site is it doesn't identify the actual location of the meth lab. It only gives the distance to the lab from whatever address is entered. ^{iv}
<https://www.rehabs.com/explore/neighborhood-drug-dens/>

Marijuana

- Marijuana possession and personal use growing is no longer illegal. There are no direct requirements for the seller to disclose if marijuana was grown in the house. There could be some major secondary issues related to the growing which the seller may be required to disclose. Some grow operations make major changes to a house, damage the house to reduce humidity, or create a high humid environment which promotes growth. If the buyer's agent has any information, then they should disclose it to the buyer.
- Major safety, health issues, and inspection failures related grow operation houses.
 - Large grow operations have been found with 3-4 commercial grade AC units on one house running all year. All this humidity can drastically affect the wood structure, drywall, electrical systems, and promote the growth of black mold which is a major problem. Besides being deadly, remediation of mold can cost \$10k plus.



- Modified electrical (illegal) is a huge major fire hazard and personal safety issues. Each grow light requires a ballast and power. Inspectors have seen plywood mounted on walls with dozens of open electrical and ballast. They have also found the unbelievable and dangerous concept of hot tapping directly into the high power lines below ground or behind the house, thereby by-passing the meter. When these electrical systems were dismantled, they could have been pulled out quickly and dangerously, leaving exposed live wires for unsuspecting people to find.
- Structural damage.
 - Exterior siding warping and weeping.
 - Sometimes growers cut vents holes within walls/ceilings/floors/stairs will to reduce humidity.
- Elevated CO2 levels in the house.
- Modified HVAC systems. Overuse of, modifying installed HVAC, and high humidity can drastically reduce the HVAC service life. Excessive chemicals (pesticides/fertilizers) usage within a confined space, including unmarked containers have been found. These chemicals could also be dangerous and poisonous if poured down the drain. These could affect the water source as well as septic/sewer.
- The use of butane/propane systems for processing oils.
- Because a house was used as a growth house and the related inspection failure issues, there could be potential lender restrictions.

Metro Tax District

- A metro district is a quasi-governmental entity which provides the money needed for the infrastructure in a new community, finances this money, charges, and collects taxes from the future homeowners to pay for the public infrastructure. According to the Denver Post there are nearly 1,800 metro districts in our state without oversight from voters, without restrictions on conflicts of interest, and without checks and balances. In fact, Colorado law allows developers to elect themselves to serve on a district's board of directors and then the board votes to approve millions of dollars in public financing (and add additional financing) to repay the developers for their infrastructure costs upfront, without any vote from the community.
- Colorado code "§ 38-35.7-101. Disclosure - Special Taxing Districts - General Obligation Indebtedness" states it is the seller's responsibility to disclose and provide documentation to buyers if their property is part of a Metro Tax District.
- To learn more about metro districts problems and issues, please request or download my pamphlet: "Metro Districts-A major financial threat to home buyers".

**2021 Colorado Code Title 38 - Property - Real and Personal
Article 35.7 - Disclosures Required in Connection With Conveyances of
Residential Real Property
§ 38-35.7-101. Disclosure - Special Taxing Districts - General Obligation
Indebtedness**

1. Every contract for the purchase and sale of residential real property shall contain a disclosure statement in bold-faced type which is clearly legible and in substantially the following form:
SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

2. The obligation to provide the disclosure set forth in subsection 1 of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection 1 of this section, the purchaser shall have a claim for relief against the seller for all damages to the purchaser resulting from such failure plus court costs.

[vi](https://law.justia.com/codes/colorado/2021/title-38/article-35-7/section-38-35-7-101/Universal Citation: CO Code § 38-35.7-101 (2021) History. Source: L. 92: Entire article added, p. 995, § 4, effective July 1. L. 2009: (1) amended, (SB 09-087), ch. 325, p. 1735, § 7, effective July 1.</small></p></div><div data-bbox=)

Home Owners Associations (HOA)

- An HOA is a community organization typically within a subdivision, community, or condominium building which establishes/enforces community rules and is responsible for the condition and management of the common areas. Board members are elected from the membership. Anyone who purchases a property within the community automatically becomes a member and is required to pay dues. Many HOAs also host community events and activities. Some HOAs may be minimal and others can be very restrictive in their rules: landscaping, grass height, outdoor decorating, exterior house colors, parking, trash cans, and types of activities/businesses allowed to be operated from home. Non-complaint HOA members may have fines imposed, liens attach to their properties, and can be foreclosed for non-payment.
- The seller must provide HOA documents to buyers, and most HOAs have their information on-line. Title can also provide these documents for a fee and many HOAs will charge a rush fee for requests less than 10 Days. The offer contract HOA disclosure date is identified within para 3(8). The type of HOA items to be sent to the buyer include:
 - Annual balance sheet
 - Annual income statement
 - Annual board minutes (current and past)
 - Articles of incorporation
 - Articles of organization
 - Assessment by unit type
 - Audit reviews
 - Bylaws
 - Construction defect actions
 - Declarations
 - Governance policies
 - Insurance policies
 - List of fees & charges
 - Operating budget
 - Operation agreement
 - Party wall agreement
 - Reserve study
 - Reserves
 - Rules & regulations
 - Unpaid assessments notice

2021 Colorado Code Title 38 - Property - Real and Personal

Article 35.7 - Disclosures Required in Connection With Conveyances of Residential Real Property

§ 38-35.7-102. Disclosure - Common Interest Community - Obligation to Pay Assessments - Requirement for Architectural Approval

1. On and after January 1, 2007, every contract for the purchase and sale of residential real property in a common interest community shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form: THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

2.

A. The obligation to provide the disclosure set forth in subsection (1) **of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for actual damages directly and proximately caused by such failure plus court costs.** It shall be an affirmative defense to any claim for damages brought under this section that the purchaser had actual or constructive knowledge of the facts and information required to be disclosed.

B. Upon request, **the seller shall either provide to the buyer or authorize the unit owners' association to provide to the buyer, upon payment of the association's usual fee pursuant to section 38-33.3-317 (4), all of the common interest community's governing documents and financial documents,** as listed in the most recent available version of the contract to buy and sell real estate promulgated by the real estate commission as of the date of the contract.

3. This section shall not apply to the sale of a unit that is a time share unit, as defined in section 38-33-110 (7).

History. Source: L. 2005: Entire section added, p. 1389, § 19, effective January 1, 2006. L. 2006: Entire section R&RE, p. 1225, § 15, effective May 26. L. 2012: (2)(b) amended, (HB 12-1237), ch. 232, p. 1019, § 2, effective January 1, 2013.

Disclaimer:

- While these Colorado codes were relevant at the time of the creation of this pamphlet, I make no warranties or guarantees about their accuracy, completeness, or adequacy of the information. The State of Colorado may have, and does modified & updated codes. Please check the official State of Colorado website for the most current versions.
- This handout is for general real estate information only and are the opinions of this REALTOR® and is not to be construed as legal advice. Individuals should feel free to contact a lawyer for legal clarification.
- Your seller agent will provide you with the most current property disclosure forms. There are separate forms for houses and land.

ⁱ <https://codes.findlaw.com/co/title-38-property-real-and-personal/co-rev-st-sect-38-35-5-101.html>

ⁱⁱ History. Source: L. 2006: Entire section added, p. 712, § 1, effective January 1, 2007. L. 2009: (2)(a) amended, (SB 09-060), ch. 140, p. 601, § 3, effective April 20. L. 2013: (2)(c) and (4) amended, (SB 13-219), ch. 293, p. 1570, § 2, effective August 7.

ⁱⁱⁱ <https://www.robinsonandhenry.com/colorado/real-estate/disclose-meth-on-a-property/>

^{iv} <https://www.rehabs.com/explore/neighborhood-drug-dens/>

^v https://morguefile.nyc3.cdn.digitaloceanspaces.com/imageData/public/files/p/penywise/preview/fldr_2008_11_10/file000649881100.jpg

^{vi} <https://law.justia.com/codes/colorado/2021/title-38/article-35-7/section-38-35-7-101/> Universal Citation: [CO Code § 38-35.7-101 \(2021\)](#) History. Source: L. 92: Entire article added, p. 995, § 4, effective July 1. L. 2009: (1) amended, (SB 09-087), ch. 325, p. 1735, § 7, effective July 1.

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