



State Senator Liz Krueger's Albany Update Fall 2011

YOUR HOUSING RIGHTS

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REPORT TO NEW YORKERS ON HOUSING FROM STATE SENATOR LIZ KRUEGER

Dear Neighbor,

With the growing shortage of affordable housing—for both renters and homeowners—there has never been a more important time to understand your rights and how current housing laws apply to you. There is not enough space to address all the pertinent facts, rights, and obligations so this newsletter covers the issues which come up most often in my District Office. You should be aware, however, that there are exceptions to many of the regulations and programs outlined here.

New York State's rent regulation laws, which govern the rights of more than two million New York City tenants, were renewed through June 2015 at the end of this year's legislative session. A number of small amendments were made to the laws to increase tenant protections. These changes are reflected throughout this newsletter and include: an increase in the monthly rent level at which landlords can deregulate vacant apartments from \$2,000 to \$2,500, an improvement to the formula used to determine the permanent monthly rent increases landlords may charge tenants for new appliances and services in buildings with more than 35 apartments, and the raising of the high income decontrol limit from \$175,000 to \$200,000. While I am pleased that the rent regulation laws were strengthened for the first time in eighteen years, I believe we had the opportunity to do much more to slow the erosion of affordable housing that occurs as apartments leave the system. I consider the legislation we passed a down payment for further efforts to strengthen tenant protections in the future.

While the problems faced by condominium owners and co-op shareholders are often very different from those faced by renters, my office also receives many inquiries from owners and shareholders who are confused about their rights and responsibilities. Residential condominiums and co-ops are regulated by a complex set of laws, regulations, individual building bylaws, and other corporate documents. Page 4 of this newsletter provides a basic overview of the rights of all shareholders and condominium owners under various state and city laws, as well as a list of real estate property tax exemptions for which they may be eligible.

If you need more information, or help with individual or building-wide problems, please contact my office. We will be happy to speak with you, either individually or in a group. Please let me know if you would like additional copies to distribute in your building.

Sincerely,

Liz Krueger
State Senator

QUESTIONS AND ANSWERS ABOUT TENANTS' RIGHTS

What services are tenants entitled to?

The Warranty of Habitability Law, the Housing Maintenance Code, the Multiple Dwelling Law and other laws guarantee tenants certain essential services and protections. Tenants have the right to a safe, well-maintained, livable apartment, to organize and hold tenants' meetings in their buildings and to make complaints about lack of services without reprisals.

Owners must: identify and register with the New York City Department of Housing Preservation and Development (HPD) the name of both the owner and agent authorized to make emergency repairs and list a phone number in the building where the owner/agent can be reached at all times; provide regular extermination services if needed; provide daily garbage disposal by compactor or in a sufficient number of covered garbage cans; keep public areas of the building and lot clean and free of vermin; provide janitorial services; and keep the building in good repair. For buildings with nine or more units, a super must live on the premises or within 200 feet of the building.

What are my responsibilities as a tenant?

Tenants must remember that they have legal responsibilities both to the building owner and their neighbors. Tenants must properly maintain their apartments, discipline their pets, as well as keep stairwells, fire escapes and public hallways clean and clear of obstructions. They must keep noise levels down from television sets and stereos and, if required in the lease, cover floors with rugs or carpeting. They must also comply with NYC recycling requirements. Tenants are also obligated to pay the rent on time. By fulfilling these obligations, tenants may help create a more pleasant environment for everyone in the building and a more positive owner-tenants relationship.

Leases are valid and enforceable contracts between tenants and owners and should be complied with by both sides. In cases where the lease and the law differ, however, the law prevails, and tenants cannot sign away any of their legally protected rights.

What if I don't receive proper services or repairs?

If you have a problem with building services or need repairs, first speak to the owner or the agent. If they fail to respond to your complaint, put it in writing and mail it by certified mail, return receipt requested. Keep copies of all correspondence and records of conversations. If the owner does not act in a reasonable period of time (determined by the urgency of the problem), consider these options:

Request a Code Enforcement Inspection. Call the NYC Central Complaint Line at 311. HPD will send inspectors to examine your problem and issue orders to correct violations if appropriate.

Go to Housing Court. If your problem is serious, you may want to bring an action in Housing Court. If your problem involves building-wide services, it is a good idea to undertake any legal action through a formal tenants' association, although you may pursue an individual action. To bring an owner to court, three forms, obtainable from the Housing Court at 111 Centre Street, must be completed: an Order to Show Cause, an affidavit detailing the complaint and an Affidavit of Service. For more information on the Housing Court process, go to <http://www.cwtfhc.org/for-tenants>.

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The \$45.00 filing fee per action may be recovered if you win your case. If you cannot afford the fee, you may apply to have it waived. Once the proper forms have been filled out and the papers are served, you will be notified of a hearing date. Judges can levy fines, issue orders to correct violations and appoint special administrators to run problem buildings.

Seek a rent reduction. Rent regulated tenants can file an application with the New York State Division of Housing and Community Development (DHCR) for a rent reduction based on decreased service(s). DHCR has the authority to order a rent reduction until services are restored. Separate complaint forms are available for individual and building-wide issues. Forms are available online at <http://nysdhcr.gov/Rent/>.

What about heat and hot water?

During the heating season (October 1 through May 31), owners must provide heat as follows: During the day (6 am to 10 pm), if the temperature outside is below 55 degrees, apartments must be heated to at least 68 degrees. At night (10 pm to 6 am), if the temperature is below 40 degrees, apartments must be heated to at least 55 degrees. Owners must supply hot water all year long at a constant minimum temperature of 120 degrees.

If your owner fails to provide heat or hot water, keep an accurate daily record of this and report it to HPD by calling 311.

Is my apartment rent-controlled or rent-stabilized?

While there are exceptions to these general rules your apartment is probably rent-controlled if your building was built before 1947, contains three or more apartments, and you or a family member moved in before July 1, 1971.

Your apartment is probably rent-stabilized if your building contains six or more apartments and 1) was built between 1947 and 1973; or 2) was built before 1947 and you moved in after June 30, 1971.

Generally, controlled tenants have one old lease or no lease; stabilized tenants renew leases every one or two years. Some apartments that meet the general criteria for rent regulation are exempt due to the rent level of the apartment and the timing of past vacancies.

Apartments in buildings constructed after 1973 are not subject to regulation unless the owners received assistance under one of two city tax benefit programs, J-51 or 421-a, or certain other city or state loan programs. Special rules also apply to buildings owned by non-profit institutions such as hospitals or colleges. Certain units may also be deregulated because of the rent and the tenant's income; these provisions are explained in detail below.

Owners of rent regulated apartments are required to register their units with DHCR each year. If you have questions about your apartments status or legal rent, you can call DHCR at 866-275-3427 and speak to a housing counselor.

How are rent increases determined for rent-stabilized and rent-controlled apartments?

Increases for **stabilized apartments** are established annually by the NYC Rent Guidelines Board whose 9 members are appointed by the mayor. For renewal leases taking effect on or after October 1, 2011 and on or before September 30, 2012, the guidelines for apartments are: 3.75% for a one-year lease; and 7.25% for a two-year lease.

Increases for **controlled apartments** are derived from two figures: the Maximum Base Rent (MBR), a maximum ceiling for rents, and the Maximum Collectible Rent (MCR), the amount an owner can actually collect. New MBRs are computed for each rent-controlled apartment in the city every two years. However, the annual MCR increase in most cases cannot exceed 7.5% annually and there are some conditions owners must meet in terms of removing violations and maintaining the apartment in order to qualify for the increase.

What is a "preferential rent"?

Many rent stabilized tenants pay a rent that is less than the rent the landlord is legally permitted to charge – this rent is called a preferential rent. In most cases, this rent was negotiated between the tenant and the landlord when the tenant first moved in. In some cases, the lower rent was negotiated because the landlord was unable to get the legal rent (because of building conditions, size of apartment or neighborhood reputation) or because the landlord wanted to do a favor for the tenant. While the law allows a landlord to raise the rent from the preferential rent to the legal rent on any lease renewal, certain legal conditions must be met. Tenants who are informed their preferential rents are being terminated may want to consult a tenant organization or attorney to ensure that their landlords have met the required conditions.

What additional increases can affect regulated apartments?

New Appliances: Your rent can be increased if the owner provides you with a new appliance, equipment or service. But your written consent (and an owner's notification to DHCR, if you are a rent-controlled tenant) is necessary before such increase goes into effect. A tenant does not have to accept new appliances and pay an increase, despite any claims by the owner that only new equipment is available for replacements. In the event that an appliance breaks down, the law requires the owner to repair it or replace it with a used or reconditioned appliance in good working order. If a tenant opts for a new appliance, an owner is entitled to collect a permanent monthly rent increase equal to 1/40th of its cost if the building contains 35 or fewer apartments and 1/60th of the cost if the building has 36 or more apartments. Owners are also entitled to a 1/40th increase for new equipment or improvements in vacant apartments if the building contains 35 or fewer apartments and 1/60th of the cost if the building has 36 or more apartments.

Major Capital Improvements (MCIs): Eligible MCIs must contribute to the operation, maintenance and preservation of the building, and directly or indirectly benefit all the tenants. The most common improvements are new roofs, elevators, boilers or windows in every apartment.

Completion of the improvements may entitle the owner to increase your rent, subject to approval by DHCR. DHCR may reject MCI applications if owners have failed to maintain all required services in the building or there are current "immediately hazardous" violations in effect. DHCR may grant increases conditioned on correction of violations within a reasonable time frame. Improvements paid for out of the reserve fund of a cooperative corporation or condominium association, unless reimbursed by a special assessment on unit owners, and those paid from grants from governmental entities, are not eligible for MCIs.

MCIs are permanent rent increases to your rent which are 1/84th of the total cost of the improvement, divided by the total number of rooms in your building, and then multiplied by the total number of rooms in your apartment. For controlled tenants, MCI increases are capped at 15% annually; for stabilized tenants, the ceiling is 6%. Because of the delay in processing MCI applications, DHCR has been allowing owners of rent-stabilized units to collect an additional temporary increase retroactive to the date that the tenants were served with the owner's MCI application.

When DHCR begins processing an MCI application, tenants receive an official notice outlining the work done and the increase sought. Tenants then have 30 days to challenge the application. Do not pay any MCI increase until you have received a copy of the order authorizing the increase from DHCR.

How can I check my legal rent?

The legal rent is the highest rent an owner is allowed to charge for a rent stabilized apartment, and is established by the apartment's history of vacancies, lease renewals (set by the Rent Guidelines Board and depends on the year), improvements during a tenancy, and renovations during vacancy. Landlords are required to put the legal rent on all leases and to register the legal rent with the state housing agency. If you believe you may be being charged more than is allowed under the law, you can obtain a copy of your apartment's rent registration history by calling the DHCR's Office of Rent Administration at 718-739-6400. If, after obtaining the rent registration history you believe you are being overcharged, you can file a Rent Overcharge complaint with DHCR.

What lease renewal options apply to rent-stabilized apartments?

Tenants have the right to renew their lease for either a one- or two-year period at the RGB's approved renewal rate then in effect, under the same terms and conditions as their original lease. Owners must use a lease renewal form promulgated by DHCR. New tenants have the same right to choose a one- or two-year lease.

There are some very limited circumstances in which an owner can apply to DHCR for permission to deny a rent regulated tenant a renewal lease; you should seek advice from tenant advocacy groups and/or legal counsel if you learn that your landlord has applied to DHCR for permission to refuse a lease renewal.

Owners must offer renewal leases between 150 to 90 days prior to the expiration of the tenant's lease, or state the reason why they are not renewing the lease. If you don't receive a timely renewal notification, remind the owner of his or her obligation in a certified letter, return receipt requested. If no renewal is forthcoming, file an Owner's Failure to Renew Lease complaint with DHCR and sit tight. Until you receive a renewal lease, your current lease remains in effect. Please keep in mind that a tenant's failure to respond within 60 days of the offering of a new lease may lead to eviction proceedings.

What is “luxury decontrol?”

Apartments renting for \$2,500 or more are deregulated when the occupants have an adjusted gross income of \$200,000 or greater for the previous two years consecutively. In order to apply to DHCR for a deregulation order, the owner must send the tenant an “Income Certification Form,” by May 1 of each year. If the tenant refuses to return the form, or if the owner disputes the information that the tenant submitted, the owner can file a Petition for Deregulation, and DHCR will then attempt to obtain the income information from the tenant. If the tenant either shows an income of over \$200,000 or fails to return the form within 30 days, DHCR can issue a decontrol/destabilization order.

What about security deposits?

Owners are entitled to collect a security deposit limited to one month’s rent from regulated tenants. Security deposits for free-market apartments are not limited.

Owners of buildings with six or more apartments must place your security deposit in a separate interest-bearing account and inform you of the bank’s name. You may request that the landlord either pay you the interest annually (minus a 1% administration fee), apply it towards the rent, or pay it to you in a lump sum when you move. Complaints regarding failure to comply with these security deposit regulations can be filed with the State Attorney General’s Office (800-771-7755).

What are my rights to sublet my apartment?

Unless greater rights are allowed in their lease, rent-stabilized tenants have the right to sublet their apartments for two years out of any four-year period subject to the owner’s consent, which cannot be unreasonably withheld. Rent-controlled tenants have no legal right to sublet their apartments.

A tenant may sublet an apartment if the owner unreasonably withholds consent or fails to respond to a sublet request. A tenant cannot sublet if the owner reasonably withholds consent. A “reasonable” objection may, for example, be based on the past rental history of the prospective subtenant.

If the apartment is furnished, rent charged to a subtenant cannot exceed the legal rent plus up to a 10% surcharge, payable to the tenant. The owner is also entitled to collect an additional 10% under this year’s guidelines for sublet apartments. If the tenant overcharges a subtenant, the tenant may be liable to the subtenant for treble damages. The sublet term may exceed the term of the lease, provided the prime tenant renews the lease. Tenants must continue to maintain their apartments as their primary residences, and must intend to re-occupy them as such.

Am I allowed to move out of my apartment before the lease is up?

Only senior citizens over age 62 who have been accepted for residency in certain adult care facilities or designated senior housing can terminate a lease without penalty upon 30 days’ notice to the owner in the manner outlined in the statute. For all other renters, a lease is a legally binding contract and tenants may be held liable for the rent for the balance of the lease term if an owner brings an action in court. However, many owners are pleased about a tenant leaving before the lease is up since it may mean additional rent increases through a vacancy lease or apartment improvements. The best bet is to discuss the situation with the owner well in advance of the time you want to move out.

Can the owner enter my apartment?

Owners must have access to your apartment in an emergency which might result in damage to the building or other apartments, such as a broken water pipe or gas leak. Owners are also permitted to enter apartments with reasonable notice to inspect and make needed repairs. Tenants may install an additional lock but must provide the landlord a duplicate key if one is requested. Failure to grant reasonable access can be grounds for eviction.

May I have a roommate?

Provided a tenant continues to occupy the apartment as their primary residence, each tenant named on a lease has the right to have one unrelated roommate and that roommate’s dependent children reside with them. Immediate family members of the named tenant do not count as roommates. Tenants who take in a roommate are required to notify the owner or respond to a request from the owner about who is living in the apartment within 30 days of a formal request for such information.

An owner can begin eviction proceedings against a tenant for charging their roommate more than a proportionate share of the rent and the subtenant can collect treble damages from the prime tenant. If the tenant named in the lease moves out, the remaining occupant has no right to the apartment without the owner’s consent.

May I keep pets in my apartment?

If your lease specifically permits pets or is silent on the issue, then you may have pets. Lease clauses banning pets are binding. However, “no-pet” clauses are void if owners don’t act to enforce them within three months of the time the tenant began openly keeping a pet.

May I install my own appliances?

Tenants must return their apartments to their landlords in the same condition in which they were rented (with the exception of normal wear and tear). Tenants may not remove any appliances installed by the apartment owner without first receiving written permission from their landlords. In many cases, making permanent physical changes to a unit without permission can be grounds for eviction.

Can I be evicted?

The laws governing eviction are quite complex and are different for each type of housing. If you are facing eviction you are strongly advised to seek legal counsel. Under New York City law, anyone who has lived in a home for 30 days or longer (regardless of the type of unit) can only be legally evicted if the owner has filed an eviction case in Housing Court and obtained a judgment of possession from the court. You can find out more about your rights and options in Housing Court from a nonprofit organization called Housing Court Answers at <http://www.cwtfhc.org/>. An owner who attempts to evict a tenant without first obtaining an order from a Housing Court judge is committing a criminal offense and should be immediately reported to the police.

While there are some exceptions, if you are a rent regulated tenant you can only be evicted if you fail to pay your rent, do not use the apartment as your primary residence, or violate a substantial obligation of your tenancy. If you are a market rate tenant you cannot be evicted until the expiration of your lease unless you fail to pay your rent or violate a substantial obligation of your lease.

Who is eligible for the Senior Citizen Rent Increase Exemption (SCRIE) program?

The SCRIE program freezes rents for eligible tenants and provides a tax abatement for the owner in return. To be eligible for a SCRIE, you must be 62 years of age or older, live in a rent-regulated apartment, have a household income (after taxes) of \$29,000 or less and be paying more than one-third of your income for rent. You must apply for a SCRIE and recertify your eligibility every two years. Tenants who experience a permanent decrease in income of more than 20% can apply to have their benefits recalculated. To obtain an application, you can either call 311, download one from the NYC Department of Finance website, or contact my office.

Figures show that only a fraction of eligible recipients are receiving the SCRIE benefits to which they are entitled. If you or someone you know may be eligible for SCRIE, please call or pick up an application in my office or call 311 to get one from the Department of Finance.

Who is eligible for the Disabled Rent Increase Exemption Program (DRIE)

The DRIE program freezes the rents of disabled people living in rent-regulated apartments or Mitchell Lama buildings and provides a tax abatement for the owners. Households that are eligible include those receiving Social Security Disability, Supplemental Security Income, Veteran’s pensions or compensation, and those enrolled in the Medicaid Buy-In Program. DRIE is designed to work in the same way as SCRIE except that it has lower income limits. The eligibility limit for DRIE varies by household size and source of income but in general the income limit for single individuals is \$19,284 and \$27,780 for couples. However, there are certain deductions that will be allowed. To obtain an application, you can either call 311, download one from the NYC Department of Finance website, or contact my office.

What about “free market” apartments?

Rental apartments not subject to the rent stabilization or rent control laws are known as “free market” apartments. Rents for free market apartments are negotiated. The lease the parties sign dictates the terms of the tenancy. Tenants should carefully review such leases before signing, particularly with regard to the tenant’s taking occupancy, obligations, security deposits, use of parking spaces or other building facilities, improvements to be made to the apartment prior to the tenant taking occupancy, ongoing maintenance and late charges. Owners of free market apartments are not required to offer tenants renewal leases. There are no limits on rent increases. Despite the exemption from rent regulation, there are a number of laws which apply to all owner/tenant relationships, such as the Warranty of Habitability, the NYC Housing and Maintenance Code, the Multiple Dwelling Law and the Roommate Law.

THE RIGHTS OF CO-OP SHAREHOLDERS AND CONDOMINIUM OWNERS

The rights of condominium owners and co-op shareholders are derived from a complex set of laws, regulations and individual building by-laws and other corporate documents. Offerings of condominiums and cooperatives are regulated by the Attorney General under the General Business Law (GBL), a statute designed to protect potential buyers from fraud through detailed disclosure requirements. Once cooperative and condominium plans are declared effective, condominiums fall under the NYS Condominium Act and cooperatives fall under the state’s Business Corporation Law – the same statute that regulates the state’s major corporations.

Although both of these statutes grant owners and shareholders some rights, their primary purpose is to require that co-ops and condos simply address certain issues in their operating documents: for co-ops, the proprietary lease, house rules, Certificate of Incorporation and by-laws; for condos, the Unit Deed or Declaration, house rules and by-laws of the condominium association.

Among the rights of shareholders and condominium owners under various state and city laws, are:

- the right to “quiet enjoyment” and peaceful use of the apartment and all public areas and facilities within the co-op or condominium;
- the right to expect that common areas will be maintained in proper condition, as required under the Real Property Law’s “Warranty of Habitability;”
- the right to receive all services and use all common facilities available to all other owners in a non-discriminatory manner;
- the right to be charged only the approximate proportionate share of the expenses of the co-op or condominium;
- the right to a list of all shareholders in the co-op corporation;
- the right to participate in an annual meeting of all shareholders or unit owners and to receive timely notice of the annual meeting or any special meetings;
- the right to inspect the minutes of all shareholders’ or condominium association meetings;
- the right to receive an annual financial statement;
- the right to vote to amend the Proprietary Lease, Certification of Incorporation, Declaration of Condominium or Bylaws;
- the right to be counted in elections proportionate to units or shares owned.

Despite these rights, shareholders and condominium owners who are treated unfairly and arbitrarily by their board have found that the deck is often stacked against them when they seek changes, particularly when the board is still controlled by the sponsor. You can find additional information about how to deal with problems involving condominium and co-op boards on the NY State Attorney General’s website at http://www.ag.ny.gov/bureaus/real_estate_finance/resource_center.html.

PROPERTY TAX EXEMPTION PROGRAMS

New York State residents who are homeowners qualify for the **Basic School Tax Relief (STAR)** program regardless of age if their annual adjusted gross income is \$500,000 or less and the property is their primary residence (meaning they live in the home for more than six months each year). STAR provides savings of approximately \$200 a year. Residents 65 and older who qualify for Basic STAR and have an annual household income less than \$79,050 are eligible for Enhanced STAR. **Enhanced STAR** provides average yearly savings of \$400.

The **Senior Citizen Homeowner’s Exemption (SCHE)** is a partial real property tax exemption available for property owners, aged 65 years or older with an annual adjusted gross income below \$37,400, and who reside in residential properties including one-, two-, or three-family homes, condominium units, or cooperative apartments.

Note: Applicants who qualify for SCHE automatically are eligible for the Enhanced STAR exemption. Individuals who file for SCHE do not have to file a separate application for STAR.

The **Disabled Homeowners Exemption (DHE)** provides a partial real property tax exemption for property owners who have a medically certifiable disability, an annual income below \$37,400, and who own and reside in a one-, two- or three-family home, condominium or co-op.

The **Veterans Tax Exemption** is a partial property tax exemption for property owners who served in the U.S. armed forces in World War I, World War II, Korean, Vietnam, or the Gulf War. The spouses, registered domestic partners, parents of those service members killed in action in any of the wars listed above, and the unmarried surviving spouses of eligible veterans may also receive the exemption. Legislation is currently pending to expand this benefit to veterans of the wars in Iraq and Afghanistan.

All of these tax exemption programs are administered by the NYC Department of Finance, and are applied for using a single application. For more information regarding any of these programs, or to receive an application, you may contact my office at (212) 490-9535, call 311, or download one from the Department of Finance website at http://www.nyc.gov/html/dof/html/pdf/property/exemption_abatement.pdf. Eligible property owners must submit their applications by March 15th in order to qualify to have the benefits reflected in their next annual real estate tax bill.

Important Housing Phone Numbers and Websites

You may file complaints regarding a wide range of building problems (such as heat, hot water, elevators, noise, garbage, building safety, asbestos, illegal construction) by calling 311. An inspector from the appropriate city agency will then further investigate the situation. Be sure to make a note of your complaint number so you can monitor the status of the investigation.

- NYS DHCR.....<http://nysdhcr.gov/Rent/>
- NYC HPD.....<http://www.nyc.gov/html/hpd/html/home/home.shtml>
- NYS Attorney General.....<http://www.ag.ny.gov/>
- NYC Rent Guidelines Board.....<http://www.housingnyc.com>
- Metropolitan Council on Housing.....<http://www.metcouncil.net/>
- Tenants and Neighbors.....<http://www.tenantsandneighbors.org/>
- Housing Court Answers.....<http://www.cwtfhc.org/>
- Alliance of Coop and Condo Owners.....<http://condocoopowners.org/>
- Law Help..... <http://www.lawhelp.org/NY/>
- Council on NY Cooperatives & Condominiums.....<http://www.cnyc.com/>

Community groups that can also help with housing problems:

- Metropolitan Council on Housing.....(212) 979-0611
- NYS Tenants and Neighbors.....(212) 608-4320
- Housing Court Answers.....(212) 962-4795

Sources of legal assistance for eligible, low-income renters:

- Manhattan Legal Services.....(646) 442-3100
- Legal Aid Society..... (212) 577-3300
- EIS: Housing Resource Center..... (212) 308-2210
- NYC Bar Association Legal Hotline.....(212) 626-7383
- Lenox Hill Neighborhood House.....(212) 744-5022
- MFY Legal Services.....(212) 417-3812
- Manhattan Legal Aid for Seniors Project.....(212) 417-3880



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