



# Frank Lasee

WISCONSIN STATE SENATOR  
FIRST SENATE DISTRICT



## Senator Lasee's Testimony *Senate Bill 629: Foreclosure Reform*

A residential foreclosure is bad for everyone. A family loses a home; a lender loses an investment; neighborhood property values suffer; and local governments struggle to manage abandoned properties and cope with potentially increased crime rates. This bill aims to reduce these negative consequences endured by communities—in a way that strikes a reasonable balance among all stakeholders' interests.

This bill creates a defined, uniform process which will benefit the borrower, the lender, and municipality by clarifying our current state laws. It will lessen the negative impacts felt by the entire community by clarifying a complicated system to be more easily navigated by all involved.

This bill encourages a borrower to work with their bank to get caught up. If the homeowner is making a good-faith effort to sell their property or reach an agreement with a lender, a court may extend the time they have to redeem that property and get caught up. When a homeowner is not working with their bank then the redemption period can be shortened to help avoid long-term vacant properties which lose value, become blighted, and are harder to re-sell.

This bill ensures a clear transfer of title between owner and lender at the appropriate time so there is no confusion about who owns the property and when that transfer is made. It codifies existing court decisions to make sure we have a more uniform predictable process to make sure that all stakeholders are playing by the same rules.

This bill will lead to more confidence in the system, fewer abandoned and blighted properties, and less confusion for the borrower and lender. Please join me in supporting this needed reform to update our foreclosure process in Wisconsin.



# TERRY KATSMAS

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**Date:** February 10, 2016  
**To:** Senate Committee on Insurance, Housing, and Trade  
**From:** Representative Terry Katsma  
**Re:** Senate Bill 629: foreclosures reform

Dear Chairman Lasee and Committee Members,

Thank you for convening a public hearing on Senate Bill (SB) 629, a bill aimed at reducing the negative consequences endured by communities in instances of residential foreclosure.

New federal rules prevent lenders from initiating a foreclosure against a borrower until the loan is at least 120 days late. Thus a delinquent borrower generally has at least four months to negotiate with the lender to avoid foreclosure before the formal process even begins. Such negotiation is commonplace; lenders and borrowers typically have a mutual interest in avoiding foreclosure by reaching some sort of deal.

In Wisconsin, if negotiation fails, the next step is for the lender to file a foreclosure lawsuit against the borrower, thus seeking a “judgment of foreclosure.” Until judgment has been entered, a borrower still has the “right to cure” by catching up on the overdue payments.

At this point, a clock starts ticking. Depending on the nature of the lawsuit, the borrower gets six months or a year (a “redemption period”) to pay off the entire mortgage balance. (In the event that the court rules that the property has already been abandoned, the redemption period is five weeks.) In reality, it is extremely rare for a borrower to achieve this. During this period, the borrower may continue living in the house—and frequently stops making any payments—but often fails to maintain the property or simply abandons it. Only after the redemption period has expired may the lender schedule a public auction of the property, retake title to the property and/or seek eviction of the borrower.

Under SB 629:

- **Redemption periods are shortened.** The current six- or 12-month redemption period (depending on the nature of the lawsuit) is halved to a three- or six-month redemption period. This provision is key to moving properties through the process more rapidly—which is crucial to preventing damage to the properties, reducing the likelihood of abandonment, sustaining neighborhood property values and preventing vandalism and other crimes.
- **Borrowers are incentivized to negotiate with lenders and avoid abandonment.** If the court finds that the borrower is making a good-faith effort to sell the property, the court may extend the redemption period to five or eight months. This provision gives well-meaning borrowers greater flexibility to arrange a short sale, reach an agreeable



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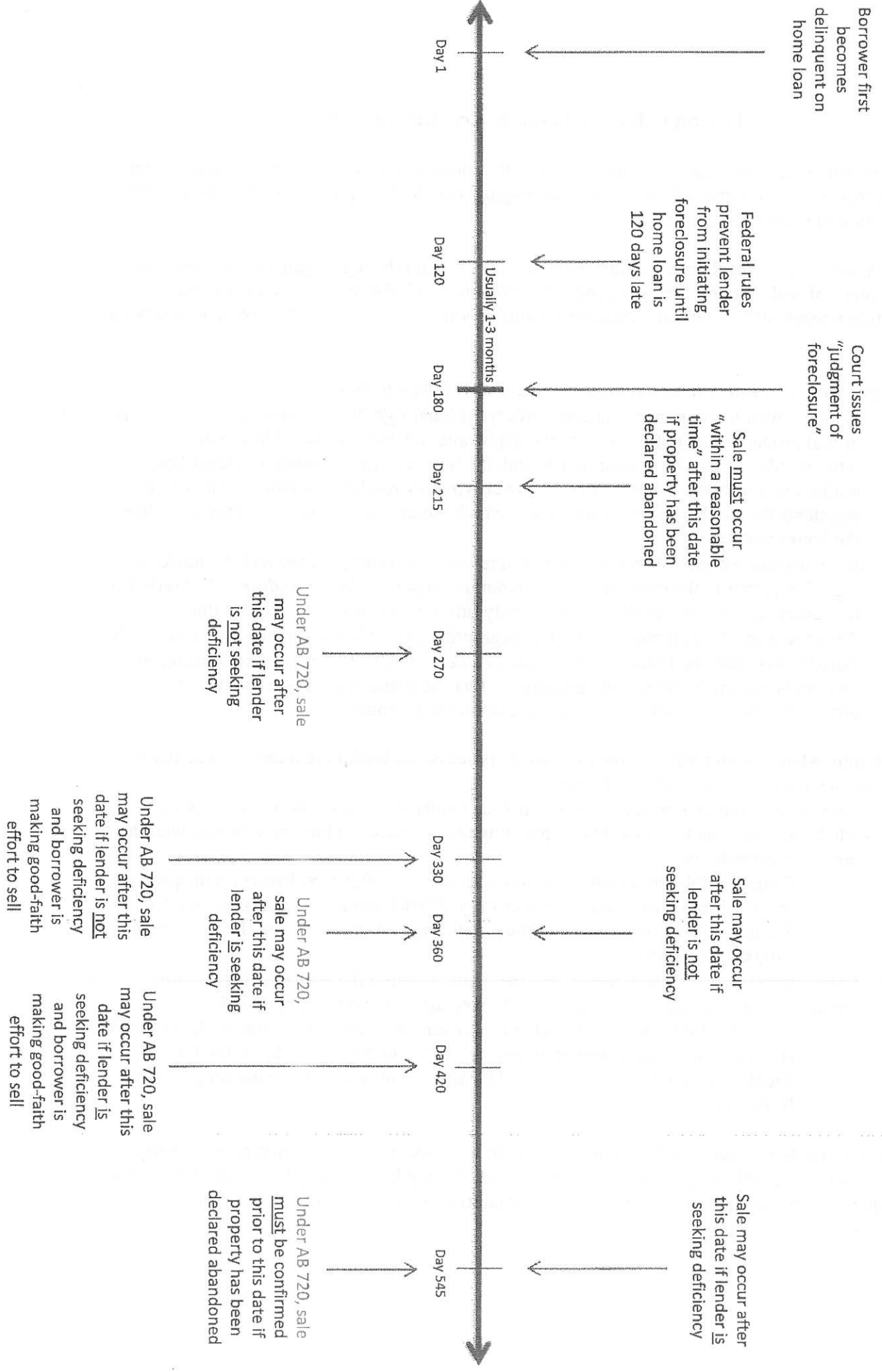
settlement with the foreclosing lender and/or remain in the home longer—and it incentivizes them to maintain the property.

- **“Zombie properties” are addressed more promptly.** For a property found by the court to be abandoned, a lender must either (1) sell the property to a new owner and have the sale confirmed in court or (2) give up its interest in the property within 12 months after the date of foreclosure judgment. At present, two forces are competing with each other. On one hand, statute prescribes no time limit for a lender to complete the foreclosure process; historically, a mortgage agreement has been understood to merely enable a lender to recover value. On the other hand, recent case law requires a lender to repossess and/or resell an abandoned property “within a reasonable time” after the elapse of the five-week redemption period, a measure that has proved useful for some communities. This provision of SB 629 is a compromise that seizes on the best of both concepts: it preserves the power of a local government (the power newly recognized by the courts) to force action and give neighborhoods an opportunity for revitalization, and it also gives lenders adequate and clearly-defined time to sell these properties at opportune dates. It also protects borrowers by guaranteeing some finality to the process.

Assembly Amendment 1 to companion bill AB 720 clarifies my original intent and incorporates some of the early feedback I received from stakeholders. First, the amendment ensures that in all instances (including cases of abandonment), borrowers continue to be protected by means of a redemption period that is at least five weeks long. Second, the amendment clarifies that all foreclosures of abandoned properties—whether residential or commercial—are subject to the proposed new 12-month time limit for confirming sale to new owners. Third, the amendment ensures that implementation of the new law will occur more smoothly by applying the bill’s effective date to all mortgage contracts “executed” rather than “recorded” after a future date. I trust that you will agree that these changes improve upon my original proposal and move to amend SB 629 in similar fashion.

I urge you to support this effort to alleviate the negative consequences endured by all stakeholders—homeowners, neighborhoods, lenders and governments—when properties go through foreclosure.

# Timeline of a Foreclosure in Wisconsin



## Helpful Definitions: Foreclosures Reform (AB 720)

A *mortgage* is an agreement that allows a lender to repossess and/or sell a piece of real property if a borrower fails to repay a loan. It does not require a lender to repossess or “get stuck with” a property that it does not desire.

A *foreclosure* is the legal process initiated by a lender to gain the legal right to repossess and/or sell a piece of real property. New federal rules published in 2014 prohibit a lender from initiating a residential foreclosure proceeding until a borrower is at least 120 days late on a home loan.

In Wisconsin, a *redemption period* protects the borrower prior to eviction.

- A lender who has obtained (via court order) the legal right to repossess and/or sell a piece of real property may not do so until the applicable redemption period has expired. In other words, during the redemption period, the borrower may remain in his/her house without fear of being evicted. The borrower typically has little incentive to make any payments during the redemption period—which means that he/she may effectively live in the house rent-free.
- If a borrower can pay off his/her entire home loan (including interest and the lender’s legal fees) prior to the expiration of the redemption period, he/she *redeems* the house and the foreclosure process ends. It is extremely rare for a borrower to achieve this.
- About two-thirds of all states include a redemption period in the foreclosure process—but usually only *after* the home has been sold to a new owner. In this respect, Wisconsin’s process is extremely “borrower-friendly” in that the home may not be sold to a new owner until the borrower’s chance at redemption has expired.

At the time when a lender initiates the foreclosure process, the lender must choose whether to foreclose *with deficiency* or *without deficiency*.

- Foreclosing *without deficiency* means that the lender is suing the borrower only for whatever value can be recovered by reselling the property—which may be less than the borrower actually owes.
  - Example: John owes \$100,000 to his lender, but after foreclosing on the property and reselling it, the lender receives only \$90,000 from the sale. If the lender decided upfront to foreclose *without deficiency*, it may not seek the remaining \$10,000 from John.
- Foreclosing *with deficiency* means that the lender is suing the borrower for the full amount owed—including any amount still owed after the property is resold.
  - Example: John owes \$100,000 to his lender, but after foreclosing on the property and reselling it, the lender receives only \$90,000 from the sale. If the lender decided upfront to foreclose *with deficiency*, it may seek the remaining \$10,000 from John.

Until and unless a lender actually exercises its right to repossess or sell a foreclosed property—after the expiration of the applicable redemption period—the borrower is the owner of record and is responsible for paying property taxes and maintaining the property according to local ordinances.



**To: Senate Committee on Insurance, Housing & Trade**  
**From: Vicky Selkove, Legislative Director, Legal Action of Wisconsin**  
**Re: SB 629/AB 720**  
**Date: February 9, 2016**

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Legal Action of Wisconsin is a nonprofit law firm. We provide free legal advice and representation to low-income Wisconsin residents in 39 counties. Through both our consumer law attorneys and the attorneys in our SeniorLAW project in Milwaukee, we have assisted numerous low-income Wisconsin residents grappling with foreclosure and the loss of their homes.

Almost exactly a year ago, the Wisconsin Supreme Court issued a rare unanimous decision in the case of *Bank of New York vs. Carson*. Legal Action of Wisconsin represented Shirley Carson in that case, which dealt directly with “zombie” properties – abandoned properties stuck in the middle of the foreclosure process. The Wisconsin Supreme Court’s decision struck a balance between homeowners who are losing their homes, communities and neighborhoods that don’t want blighted, abandoned properties, and the lenders’ interests. *This bill undoes that balance and will worsen the problem of zombie properties.*

**We are opposed to SB 629/AB 720 and have two primary concerns about the bill:**

1. Section 6 of the bill limits who can notify the court in a foreclosure action that the property has now become abandoned. The purpose of Wis. Stats. §846.102 is to protect property values, prevent blight, and protect public safety and health against the hazards posed by abandoned properties. That’s why it is important that, under current law, any party can motion the court in a foreclosure action to call attention to a property that is abandoned. It should not matter how the court learns that a property is now abandoned; what is crucial is that the court gets the information quickly. This bill limits who can motion the court for a finding of abandonment, and will only allow the plaintiff in a foreclosure action or the municipality to bring that motion.
2. Section 7 of the bill is most problematic. This section of the bill lets lenders ignore zombie properties for a full 12 months, a timeline that is both far too long and arbitrary. Even worse, sale of the property would not then even be required at the end of that year-long period. Under this bill, lenders could delay action on the property for 12 months, stalling the foreclosure case, and then simply satisfy the mortgage and walk away, leaving the neighborhood with this abandoned property.

Properties in the midst of foreclosure are likely to have been abandoned months *before* that 12 month time clock even starts ticking. Current law, as clarified by the unanimous Wisconsin Supreme Court decision in *Bank of New York v. Carson* allows judges to consider numerous factors (such as whether it is winter and a hard time to sell the house) and the specific facts of each case to decide how long the lender has to bring the abandoned property to sale. That approach is working well and ensures that zombie properties cannot blight their neighborhoods for longer than necessary. This bill

unnecessarily ties the hands of judges and will zombie properties to sit, abandoned and deteriorating, for far longer than under current law. The bill's provision that allows lenders to wait for a full year and then walk away from the mortgage and the foreclosure case only serves to compound this problem.

As has been pointed out, lenders are allowed, but not required, to foreclose on defaulting borrowers. But, once a lender files a foreclosure lawsuit, the parties and the attorneys are professionally and legally required to diligently prosecute and complete the litigation. The foreclosure filing affects neighboring property values and encourages abandonment. No one else is permitted to file a civil lawsuit and then take twelve months to decide whether he or she is going to unilaterally walk away. Why should such power be given to mortgage lenders, to the serious detriment of our communities?



**Testimony of the Wisconsin Bankers Association**  
**Jon Turke, Director of Government Relations, WBA**

**Senate Committee on Insurance, Housing, and Trade**  
**Senate Bill 629**

**February 10, 2016**

Chairman Lasee and members of the committee:

Thank you for the opportunity to testify in support of Senate Bill 629 relating to the redemption period and notice of sale applicable to a foreclosure action involving noncommercial property and procedures regarding abandoned property in a foreclosure action.

My name is Jon Turke and I am director of government relations for the Wisconsin Bankers Association (WBA). WBA represents approximately 275 commercial banks and savings institutions, their nearly 2,300 branch offices and more than 30,000 employees. With me today I have Heather MacKinnon, WBA's legal director.

The goal of this legislation is to look at what worked and did not work during the foreclosure crisis following the "Great Recession" of 2008. Information shows that states that had the ability to turn homes around faster in the market saw lower property value decreases across neighborhoods and returned to pre-recession levels of foreclosures and property values quicker.

Here in Wisconsin, foreclosures around the state and specifically in southeast Wisconsin are at pre-recession levels. This is an ideal time, with cooler heads, to address the next foreclosure crisis before it starts. SB 629, and its companion AB 720, accomplishes this by shortening the redemption period in residential properties to match commercial properties, and providing a practical solution to the abandoned property or "zombie property" issue.

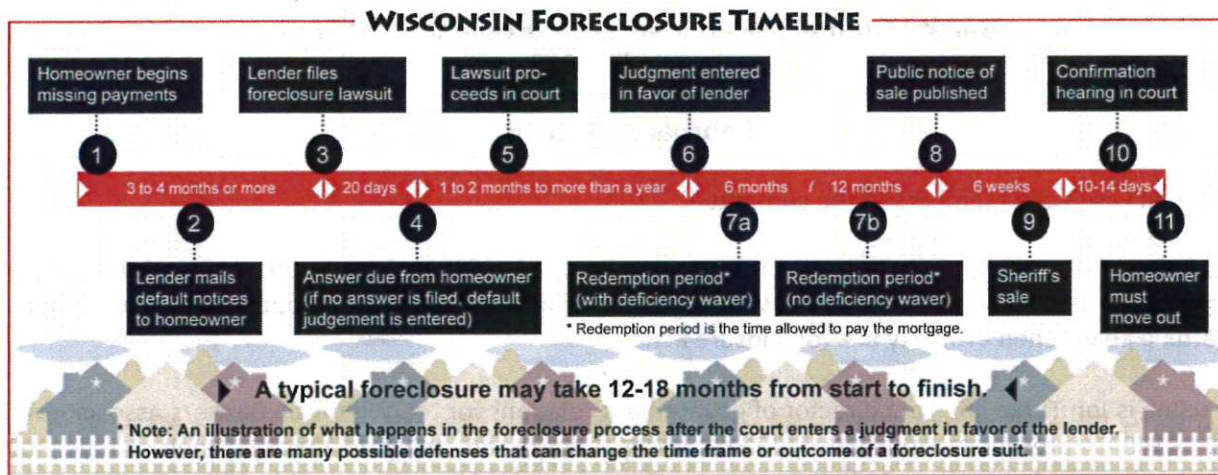
**Redemption Period in Traditional Foreclosure**

Reducing the redemption period in foreclosures is good for all sides.

- This will protect neighborhoods, communities, and municipalities from dilapidated properties which are eyesores and drive down home values in the area.
- Municipalities will get delinquent tax revenue quicker.
- Properties will be in better repair, have a less delinquent tax burden, and less municipal assessments which will ultimately help the consumer.
- Consumers will have added protections from this bill by providing 2 additional months to the redemption period if the home is marketed for sale.



- In a typical selling environment (if property is listed at a fair/reasonable price) most homes would be sold within the 6-8 months provided by the redemption laws.
- In reality, the consumer would have closer to 10-12 months to sell property. Financial institutions are required to send default notices, right to cures, need time for attorneys to prepare foreclosure complaint and file with the court, 20 day answer period for the debtor, and then finally getting the foreclosure hearing on the docket all before the redemption period would begin. Add in potential court ordered mediation and the total time could increase even more.



Wisconsin Bankers Association, 9-11

### Abandoned Property Law

Prior to 2008, Wisconsin statutes did not distinguish between a foreclosure and a property that had been abandoned. Multiple interest groups came together from all sides of the political spectrum to craft the current law. Current law states that at the expiration of a 5-week redemption period after a property has been declared abandoned, the security holder shall have a sheriff sale of the property. The State Supreme Court upheld this reading of the law in *Carson v. Bank of New York Mellon* in early 2015. To the letter of the law, WBA agrees with this decision. Further, we agree that the Bank of New York Mellon acted improperly with this case by holding the property for 5 years without action.

However, as you know, there are differences between what is written in the statute books and what works in practice throughout Wisconsin. For a property that has been abandoned for some time, significant repairs are often necessary. Under current law, those considerations cannot be taken into account and a judge would be required to force a sheriff sale upon the expiration of the 5-week redemption period.

This bill:

- This bill preserves a municipality's ability to go to court and receive a judgement for abandonment.
- Provides a definitive timeframe for Sheriff's Sale to be scheduled for both consumers and municipalities.
- A financial institution should be granted some latitude to protect itself/and shareholders (which are many of the consumers in their market).

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- Provides legal remedy for municipalities to deal with abandoned properties as they deem prudent and necessary if the financial institution walks away from the mortgage. Municipalities may want to assess the financial burden of these properties onto some else, but financial institutions cannot be held to a burden for simply possessing a security interest in a piece of property.
- If property is sold at sheriff's sale, the new owner will immediately be responsible for bringing the property up to municipal codes/standards.

I want to again thank Chairman Lasee and members for taking the time to hear this bill today. We would be happy to answer any questions you may have.

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