

Unlawful Detainer: The Eviction Process

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Table of Contents

- I. [Introduction](#)
- II. [The Eviction Process: Giving Notice](#)
- III. [Giving Notice After Foreclosure](#)
- IV. [The Unlawful Detainer Action](#)
- V. [Specific Issues](#)

I. Introduction

Many real estate licensees either own rental property or provide property management services to their clients. A general understanding of the eviction (unlawful detainer) process is essential for any landlord or property manager. What follows is a basic description of the residential eviction process. Mobilehomes are not covered in this memorandum. Please see C.A.R. legal article, [Mobilehomes](#).

A brief explanation of the terms used in this discussion is necessary. "Eviction process" refers to a series of events beginning with serving notice to the tenant and ending with the tenant's physical removal from the premises. "Unlawful detainer action" refers to the eviction court case and trial. "Rental agreement" is a broad term describing any landlord/tenant contract and includes both periodic and fixed-term tenancies. "Lease" refers to a fixed-term tenancy. Much of the unlawful detainer law is found in California Civil Code (Cal. Civ. Code) §§ 1942-1946.1 and California Code of Civil Procedure (Cal. Code Civ. Proc.) §§ 415.46, 715.020, 1161-1174.

These questions and answers are necessarily general and are not intended to substitute for appropriate legal advice in any specific tenancy or unlawful detainer action. Many real estate licensees conduct their business in areas governed by city and/or county rent control laws or other local ordinances. These local ordinances are not discussed here, however. Therefore, when confronted with any issues relating to the eviction process, parties should contact appropriate

counsel to determine how such ordinances affect the questions and answers in this memorandum. For additional information about rent control laws and links to local rent control laws, refer to the "Rent Control" topic under the [Real Estate Resources](#) page under the navigation tab Real Estate Law in *Legal Online*.

II. The Eviction Process: Giving Notice

Q 1. *When and how may a landlord lawfully evict a tenant?*

A A landlord may evict a tenant who refuses to pay rent or otherwise abide by the terms of the rental agreement. It is necessary to obtain a judgment from a court of law before actually evicting the tenant. This form of court proceeding is referred to as an unlawful detainer action. The most common circumstances in which landlords initiate unlawful detainer actions are when tenants:

- do not pay rent that is due;
- breach a covenant in the lease; or
- fail to move after proper termination of the tenancy.

If a satisfactory solution cannot be reached with the tenant, the landlord should obtain legal advice before giving the required notice and initiating an unlawful detainer action. Since eviction causes tenants to forfeit their rights, landlords are required to comply with certain detailed procedures. (Cal. Code Civ. Proc. § 1161.)

Q 2. *When is an unlawful detainer action appropriate?*

A It is appropriate only after the underlying tenancy is properly terminated. In most situations this involves giving the tenant some form of notice. Typically either a three-day, thirty-day or sixty-day notice is used to terminate a tenancy.

Before January 1, 2003, a thirty-day notice was standard. Now, a landlord will typically be required to give sixty-days notice to terminate month-to month tenancy when the tenant has lived in the unit for one year or more. (Cal. Civ. Code § 1946.1.)

Q 3. *When can a landlord terminate a tenancy?*

A If the tenant fails to pay rent or breaches the rental/lease agreement in some other way, the landlord may terminate the tenancy. The landlord/tenant relationship or tenancy is created by contract. A tenancy contract is known as a "lease" or "rental agreement." When and how a tenancy may terminate depends on factors such as whether the rental period is for a fixed term or is periodic (e.g., month-to-month) and whether or not the tenant has breached the lease or rental agreement in some way.

Generally, a landlord may not terminate a fixed term lease before the lease has expired unless the tenant has failed to pay rent or has violated the rental agreement in some other way.

Periodic tenancies (e.g., month-to-month) continue until either the landlord or the tenant terminates the tenancy with proper written notice of at least the length of the rental period. If the tenant has lived in the unit one year or more, the landlord will typically be required to give sixty-days notice to terminate the tenancy. The rental agreement may specify a shorter notice period of no less than seven days (but that applies only to the tenant's notice to the landlord). (Cal. Civ. Code §§ 1946, 1946.1.)

Q 4. *How does the eviction process work?*

A Successful eviction of a tenant generally involves:

- serving notice on the tenant;
- filing the unlawful detainer action; and
- obtaining a judgment giving the landlord lawful possession of the property.

Q 5. *What are the reasons for serving a tenant with notice?*

A Landlords and property managers usually give the tenant notice when:

- the landlord wants to terminate a periodic tenancy;
- the tenant has failed to vacate after giving the landlord notice or after expiration of the lease;
- the tenant has failed to pay rent;
- the tenant has violated the rental agreement in some other way; or
- the tenant has committed an unlawful act, waste or nuisance.

Q 6. *What types of "notice" may the landlord or property manager give the tenant?*

A Actually, there are three types of "notice," the "three-day," "thirty-day" and "sixty-day" notice (Cal. Civ. Code §§ 1946, 1946.1).

Q 7. *When is a three-day notice used?*

A Three-day notices are used when:

- the tenant has not paid the rent;
- the tenant has violated the rental agreement in some other way; or

- the tenant has committed an unlawful act, waste or nuisance.

(Cal. Code Civ. Proc. § 1161.)

Landlords and property managers may use any of three types of three-day notices discussed below, depending upon what the notice concerns. (Cal. Code Civ. Proc. § 1161.)

If the tenant has not paid rent, the tenant receives a "three-day notice to pay rent or quit." The language of this notice gives the tenant three days to either pay the rent (and stay) or leave.

If the tenant has violated the rental agreement in some way, the tenant receives a "three-day notice to perform covenant or quit." The language of this notice also gives the tenant three days to perform the covenant (e.g., ensure that no pets are on the premises) according to the rental agreement (and stay) or leave.

If the tenant has broken the law, destroyed the premises (waste) or is terrorizing the neighbors with continuous partying and loud music (nuisance), the tenant receives a "three-day notice to quit." This notice is unconditional. It means "get out within three days."

Q 8. *What is the proper procedure for serving a three-day notice?*

A The "three-day notice" may be served by the landlord, manager, or any other person over the age of 18. A copy of the notice should be delivered to the tenant personally.

If the tenant is absent from the premises and his/her workplace, the notice can be delivered to a person of "suitable age and discretion" at either the tenant's residence or workplace, and an additional copy must be mailed to the tenant at his/her place of residence. This method is known as "substituted" service.

If the place of residence and business cannot be ascertained, or a person of "suitable age and discretion" cannot be found, the landlord can post the notice conspicuously on the property, serve a copy to any resident on the property, if one can be found, and mail another copy addressed to the tenant at the place where the property is situated. This method is known as "conspicuous" service. (Cal. Code Civ. Proc. § 1162.)

Q 9. *Does the landlord have to accept the tenant's offer to pay rent within those three days?*

A Yes. If the tenant offers to pay full rent within three days of receiving the notice to pay rent or quit, the landlord must accept the payment and the tenant may remain in possession. (*Downing v. Cutting Packing Co.*, 183 Cal. 91, 95 (1920).) Generally, a landlord can refuse payment by check if all previous payments have been by cash, cashier's check or money order. However, if the tenant has tendered a check in the past, the landlord cannot safely reject the check unless the tenant has been notified otherwise in advance. (*Strom v. Union Oil Co.*, 88 Cal.App.2d 78, 84 (1948).)

If, however, the tenant offers partial payment, the landlord can properly refuse to accept and continue the eviction process. Acceptance of partial payment by the landlord invalidates the three-day notice.

Finally, if the rent is not paid within three days or if the landlord refuses to accept partial payment, and the tenant has not vacated the premises, the landlord can then file an unlawful detainer action to terminate the tenancy and recover possession. (Cal. Code Civ. Proc. § 1162(2).)

Q 10. *When is a thirty-day or sixty-day notice used?*

A When a tenant has lived in the unit for less than one year, the thirty-day notice is most commonly used to terminate a month-to-month tenancy. (Cal. Civ. Code § 1946.)

When a tenant has lived in the unit for one year or more, a landlord is generally required to give a sixty-day notice to terminate a month-to-month tenancy (Cal. Civ. Code § 1946.1). This notice may also be used to modify the terms of a month-to-month tenancy.

Q 11. *Is there an exception to the general requirement that a landlord give a 60-day notice to terminate a month to month tenancy when the tenant has lived in the unit for one year or more?*

A Yes. There is an exception when a month to month tenant has lived in the property for more than a year. Then the landlord need only give a 30-day notice to terminate as long as all six of the following criteria have been met:

1. The landlord has entered into a contract to sell the property to a natural person(s).
2. The purchaser intends to reside in the premises for at least one year following the termination of tenancy.
3. The landlord has established an escrow with an escrow company licensed by the Department of Corporations or a licensed Real Estate Broker.
4. The escrow was opened 120 days or fewer prior to delivery of the notice.
5. Title to the premises is separately alienable from any other dwelling unit (i.e., a single-family unit or condominium).
6. The tenant has not previously been given a notice of termination of tenancy.

As long as all six of the above criteria have been met, then even a month to month tenant that has been in the property more than a year may be given a 30 day notice to terminate tenancy.

Q 12. *Must the landlord state any reason for serving a thirty-day or sixty-day notice to terminate a month-to-month tenancy?*

A No, unless required by local ordinance. By law, a month-to-month tenancy is terminable by the landlord upon the serving of sixty-days notice (thirty-day notice if less than one year of tenancy).

However, the landlord cannot be motivated by a desire to retaliate against the tenant for exercising his/her legal rights, such as requesting the landlord repair an item for which the landlord is responsible. In such circumstances, the tenant may claim the legal defense of "retaliatory eviction." (Cal. Civ. Code § 1942.5(a).) See Question 32.

An exception to "no cause" termination of tenancy exists if the tenant has made an oral or written complaint regarding the habitability of the property. Then for the next 180 days, should the landlord

seek to terminate the tenancy, the landlord must state a reason in the notice

Q 13. *When and how should a landlord or property manager serve a tenant with a thirty-day or sixty-day notice?*

A The thirty-day or sixty-day notice can be served at any time. The notice must be in writing and can be served by the landlord, manager, or any other person 18 or older.

A thirty-day or sixty-day notice may be served in any of the ways that three-day notices are served (see Question 8) or by certified or registered mail. (Cal. Code Civ. Proc. § 1162.)

Q 14. *Should a landlord or property manager ever give both a three-day and a sixty-day (or thirty-day) notice at the same time?*

A It is legally permissible to serve both notices at the same time. However, using two notices is more likely to confuse the tenant and complicate the eviction process. Therefore, it is suggested that the matter be discussed first with the attorney who will handle the eviction, if this becomes necessary.

Q 15. *Is there any reason to use a thirty-day notice to terminate a month-to-month tenancy rather than a three-day notice?*

A It really depends on what the landlord wants. If the landlord wants to evict the tenant, a sixty-day notice (or thirty-day notice if the tenant has lived in unit for less than one year) might make the most sense. However, if the landlord only wants the tenant to pay the rent due or perform a covenant, such as removing a prohibited animal, then a three-day notice would suffice. Three-day notices typically can be "cured." If the tenant pays the rent and/or gets rid of the prohibited pet, the tenant has the right to stay in possession. An unconditional three-day notice to quit, such as for committing an unlawful act, is more unusual.

In either three-day notice situation, if the case goes to court, the landlord must prove that the tenant violated the rental agreement or committed an unlawful act, waste or nuisance. With the sixty-day notice, however, the landlord need only prove proper service of the notice itself in order to evict the tenant. In other words, the landlord does not have to prove that the tenant violated the rental agreement unless additional requirements are imposed by local ordinance.

Q 16. *What if the tenant gives the landlord a thirty-day notice but then refuses to move after thirty days?*

A The landlord can proceed with the unlawful detainer action after the tenant has already terminated the tenancy by serving notice and allowing thirty days to elapse. However, the landlord's acceptance of rent for a period after the termination date in the notice would invalidate the notice. (Cal. Code Civ. Proc. § 1161(5), Cal. Civ. Code § 1945.)

Q 17. *Here is a quick and easy reference to use when determining what type of notice to serve?*

Basis for Eviction	Notice Required
Nonpayment of rent	Three-day notice to pay rent or quit
Landlord wants to terminate agreement	<p>If tenant has lived in unit <i>one year or more</i>: Sixty-day notice to terminate tenancy</p> <p>If tenant has lived in unit <u>less than one year</u>: Thirty-day notice to terminate tenancy</p> <p>If tenant has lived in unit for <i>more than one year</i> and property is in escrow: Thirty day notice (see Q11.)</p>
Tenant has committed an unlawful act, waste or nuisance	Three-day notice to quit (unconditional)
Tenant fails to vacate after giving the landlord thirty-day notice <u>or</u> after expiration of the lease	No notice required unless required in rental agreement, or unless landlord has accepted rent for a later period
Tenant is in violation of the rental agreement	<p>Three-day notice to perform covenant</p> <p>OR</p> <p>sixty-day notice to terminate tenancy (thirty-day notice if tenant lived in unit less than one year)</p>

Q 18. What if a tenant's fixed-term lease expires but the tenant refuses to move?

A The landlord can proceed with the unlawful detainer action under California Code of Civil Procedure Section 1161(1). The lease itself provides the tenant with notice of termination of the tenancy. A prudent landlord, however, should notify the tenant in writing at least 30 days ahead of the upcoming lease expiration date, and indicate that there will be no renewal of the lease or any continuation of the tenancy.

Note: Some communities require "just cause" for eviction. Be aware of city and county ordinances that may restrict the landlord's right to end the tenancy. For additional information on rent-controlled cities and counties go to the [Rent Control Information](#) page on *Legal Online*.

III. Giving Notice After Foreclosure

Q 19. If a notice of default has been recorded but there has been no trustee's sale, are the above notice requirements different?

A No. Prior to a trustee's sale, all the normal rules of eviction remain the same regardless of whether a notice of default has been filed.

Q 20. After the trustee's sale, what are the notice requirements for terminating a tenancy?

A Assuming the deed of trust of the foreclosing lender is senior to the lease (Which is the case most of the time) then the notice requirements are as follows:

3 days: If the tenant is the mortgagor (borrower), then s/he must receive a 3-day Notice to Quit prior to termination of the tenancy. Also, if the tenant is a party to the mortgage note, then s/he must receive a 3-day Notice to Quit to terminate the tenancy. (Cal. Civ. Proc. Code §§ 1161a, 1161b, 12 U.S.C. § 5220 note)

60 days: If the tenant is the child, parent or spouse of the mortgagor (borrower), then s/he must receive a 60-day Notice to Quit prior to eviction. If the tenancy is not the result of an arms-length transaction or the rent is substantially lower than fair market rent, then s/he must receive a 60-day Notice to Quit to terminate the tenancy. (Cal. Civ. Proc. Code § 1161b, 12 U.S.C. § 5220 note)

90 days: If the tenant is neither the mortgagor (borrower) nor a child/parent/spouse of the (mortgagor) borrower; and the tenant is on a periodic tenancy, the tenancy is the result of an arms-length transaction and the rent is not substantially lower than fair market rent, then the tenant is entitled to a 90-day notice to terminate the tenancy. (12 U.S.C. § 5220 note)

Full term of the lease: If the tenant is neither the mortgagor (borrower) nor a child/parent/spouse of the borrower; and the tenancy is the result of an arms-length transaction, the rent is not substantially lower than fair market rent, and the tenant has a lease, then the tenant is allowed to occupy the property until the end of the lease term. However, if the foreclosed property is sold to a buyer who will occupy the property, then the lease can be terminated with a 90-day notice. (12 U.S.C. § 5220 note)

Q 21. Why is there no 30-day notice option in Question 20?

A A 30-day Notice to Terminate a Tenancy can be used when the property is not a foreclosure property and the tenant has resided in the property for less than one year (60-day notice if the tenant has resided in the property for one year or longer) (Cal. Civ. Code § 1946.1).

Q 22. If the lease is senior to the deed of trust of the foreclosing lender, what are the tenant's rights after the foreclosure?

A When the lease is senior to the deed of trust (i.e., the deed of trust was recorded after the date of the lease) or the lender had knowledge of the tenancy at the time the loan was made, the lender takes the property subject to the rights of the tenant (Cal. Civ. Code §§ 1214, 1215, *Dover Mobile Estates v. Fiber Form Products, Inc.* (1990) 220 Cal. App. 3d 1494, 1498.) The tenant becomes obligated to the lender as if the lender were the former owner (Cal. Civ. Code §§ 821, 1111).

For more details on rental property and foreclosure, please see our Q&A "Foreclosure on Rental Property".

Q 23. What happens if the landlord accepts a tenant's payment after the lease expires?

A Typically, this means that a month-to-month tenancy is created between the landlord and the tenant. The terms of the original lease continue except that the length of tenancy is now month-to-month. As a result, the tenancy can then only be terminated by a sixty-day written notice (thirty-day notice if the tenant has lived in the unit for less than a year) unless the tenant breaches the lease or fails to pay rent. (Cal. Civ. Code §1945.)

IV. The Unlawful Detainer Action

Q 24. *What is the next step after serving the tenant with notice?*

A After serving the tenant with notice, the landlord must allow the appropriate notice period (i.e., three, thirty or sixty days) to elapse. When the notice period elapses, the unlawful detainer action can be filed in court and the summons and complaint can be served upon the tenant. (Code Civ. Proc. § 1161.)

As of January 1, 2005, the landlord must attach specified documents to the unlawful detainer complaint, including a copy of the notice of termination and the rental agreement. The complaint must also be "verified" (signed by landlord under penalty of perjury). (Cal. Code Civ. Proc. § 1166.)

Q 25. *Should a property manager pursue an unlawful detainer action on behalf of a landlord?*

A It is not recommended that any property manager attempt the unlawful detainer process on behalf of a client. Instead, the landlord should be directed to appropriate legal counsel.

Q 26. *What court hears unlawful detainer actions?*

A The Superior Court in the county where the unit is located will hear the unlawful detainer action. The small claims court no longer has jurisdiction over this type of case.

Q 27. *Does an appeal prevent enforcement of a judgment in an unlawful detainer case?*

A No. There is no automatic stay of execution when a tenant appeals an unlawful detainer judgment.

Q 28. *How long does a "typical" eviction take from notice to eviction day?*

A It depends on the action taken by the tenant. A "contested" eviction case generally takes one or two months until an enforceable judgment can be obtained.

Q 29. *Can a claim for monetary relief be made in an unlawful detainer action?*

A Yes, but a claim for monetary relief is incidental to the main purpose of the unlawful detainer action (i.e., recovery of possession).

Depending on the basis of the unlawful detainer action, the landlord may recover delinquent rent and/or damages. (Cal. Civ. Code § 1951.2.)

Attorney's fees and costs may also be awarded to the prevailing party if there is a provision in the rental or lease agreement providing for their recovery.

Q 30. How does the landlord remove the tenant once a judgment has been obtained?

A When the landlord obtains a judgment against the tenant, the landlord may request that the court clerk issue a writ of possession or writ of execution. The landlord should deliver the writ of possession or execution to the local county marshal or sheriff's office and instruct the marshal or sheriff to evict the tenant. (Cal. Code Civ. Proc. § 1174(a), (d).)

The marshal or sheriff will then notify the tenant that he/she has five days to vacate the premises. Generally, this is served personally or by posting and mailing. If the tenant fails to leave within this time, the marshal or sheriff will physically remove the tenant from the premises. (Cal. Code Civ. Proc. § 715.020.)

V. Specific Issues

Q 31. What is an "Arrietta" claim?

A The term "Arrietta" comes from the case *Arrietta v. Mahon*, 31 Cal. 3d 381 (1982), in which an occupant was not named in the unlawful detainer action. That occupant then objected to enforcement of the landlord's judgment for possession claiming he had the right to be notified of the proceeding and given a chance to respond to the unlawful detainer complaint. Therefore, an *Arrietta* claim is one in which an occupant claims to have been in possession of the premises at the time the unlawful detainer action was filed and was not named in the unlawful detainer proceeding.

If this situation arises, the eviction of that person will be delayed until service of the notice of the unlawful detainer action is effectuated on the *Arrietta* occupant.

California law now contains detailed procedures for the filing of an *Arrieta* claim. (Cal. Code Civ. Proc. § 415.46.)

Q 32. What is a "retaliatory eviction"?

A Retaliatory eviction most often refers to a situation where the landlord serves the tenant with a thirty-day or sixty-day notice to terminate a month-to-month tenancy and the landlord's dominant purpose is to retaliate against the tenant for the exercise of his/her legal rights.

If, for example, the landlord attempts to evict the tenant for making repairs after the landlord failed to do so and deducting the cost from the rent due, or for reporting an unhealthy condition to a governmental agency, this is retaliatory eviction and is in violation of the law.

If the tenant exercises his/her legal rights, then so long as the tenant pays the rent, the landlord may not evict the tenant, raise the rent or decrease any services on a retaliatory basis, for 180 days. Any attempted waiver of these rights by the tenant is void.

The law provides for actual damages, and punitive damages against the landlord from \$100 to \$1,000 for each retaliatory act if fraud or malice is involved. Reasonable attorney's fees may also be awarded to the prevailing party. (Cal. Civ. Code § 1942.5.)

Q 33. *What can the purchaser at a foreclosure sale do if the occupant refuses to leave the premises?*

A It depends on (1) whether the party occupying the premises is the former owner or a tenant and (2) for a tenant, the "priority" of the tenant's interest. In other words, if a tenancy is created and recorded prior to the recording of the deed of trust in question, the tenancy generally will not be affected by the completed foreclosure and the tenant will be allowed to remain. (Cal. Code Civ. Proc. § 1161a.)

On the other hand, if the deed of trust was recorded first, the purchaser at the foreclosure sale can evict the former owner and/or tenant by an unlawful detainer action. In this situation, the purchaser must first serve the tenant of the former owner written notice to quit at least as long as the term itself but not exceeding thirty days. (It is unclear whether a sixty-day notice is required for tenancies of one year or more in this situation. (See Cal. Civ. Code § 1946.1.) Local ordinances can affect those results.

If the occupant is the former owner who was foreclosed upon then the purchaser, however, need only provide the former owner with a written "three-day notice" to quit.

Q 34. *If property is sold using an installment contract of sale (land sale contract) and the contract provides that upon the buyer's breach the buyer becomes a tenant, can the seller simply enter the property and take over immediate possession?*

A No. If the buyer breaches the installment contract of sale, the seller should use a "quiet title" action or other formal court procedure to recover possession of the property. The contractual provision mentioned above is frequently used to entitle the seller to compensation for the time it takes to eject the buyer. Even if this language is used, however, the seller will not always be entitled to recover rent.

Q 35. *What happens if a tenant files for bankruptcy either before or during the unlawful detainer proceeding?*

A Filing for bankruptcy triggers an "automatic stay." This means that the landlord temporarily can do nothing to enforce the lease or rental agreement. For example, the landlord cannot serve a three-day notice, file an unlawful detainer action, continue on in an action previously filed against the tenant, or even enforce a judgment that was obtained earlier. (11 U.S.C. § 362(a).)

Generally, the landlord must file a "Complaint for Relief from Automatic Stay" in the tenant's bankruptcy action in the U.S. Bankruptcy Court and obtain bankruptcy court approval before proceeding with the eviction. (11 U.S.C. § 362(d).)

However, if a landlord has already obtained a judgment for an unlawful detainer then the landlord may proceed with the eviction without having to ask the bankruptcy court for relief from stay. (11

U.S.C. § 362(b) (22) - (23).)

Bankruptcy law is very complex. When faced with this issue, the landlord should immediately consult an attorney for advice and assistance.

Q 36. *What should an owner do if squatters have taken over a property?*

A First, the owner should contact the local police and seek their help. The police should be willing to assist the owner so long as the squatters concede that they were not given lawful possession. However, if they claim they have a legal right (for example, an alleged oral agreement with the owner) then the police probably will not remove them from the premises.

To remove unwilling squatters, an owner should make a demand that they leave the premises. If after five days, the squatters have not left the premises, the owner should proceed with a forcible detainer action rather than unlawful detainer action. (Cal. Code Civ. Proc. § 1160.) A forcible detainer action involves different rules and procedures. The owner should seek legal advice prior to starting this action.

Q 37. *Where can I obtain more information on this subject?*

A Remember that local ordinances may have a substantial effect on the matters covered in this memorandum. For additional information about rent control laws and links to local rent control laws, go to the [Rent Control Information](#) page on *Legal Online*.

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The information contained herein is believed accurate as of Aug. 24, 2005. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.

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