

# BUYING OR SELLING PROPERTY?

What You Need to Know  
about Conveyancing in Victoria



**First Class Legal**  
YOUR PARTNER IN PROPERTY

# Introduction

First Class Legal is a legal firm with one of Victoria's busiest conveyancing practices. We handle the conveyancing process from start to finish and we do this for thousands of properties in Victoria each year.

## ***We focus on conveyancing.***

Sales and purchases are what we do every day so your property purchase or sale is in safe hands with us.

If things get tricky, we have the legal muscle to tough it out but, hopefully, we will see any complex situation arise and deal with it early. That is the value of using a firm which focusses on conveyancing.

We are also at the forefront of change and leading the market in electronic (digital) conveyancing:

First Class Legal was the first legal firm in Melbourne to do an electronic settlement (April 2015), we were the first in Victoria to prepare an electronically signed auction contract for a residential property (September 2016) and we were the first to facilitate an end to end paperless conveyance (January 2017).

We were also the first legal or conveyancing firm in Australia to lodge 1,000 Transfers electronically (August 2018).

As of 1 October 2018, nearly all transactions in Victoria have to be settled electronically. We are leading the industry so we are happy to transact in the electronic world.

If you have any conveyancing questions, please don't hesitate to phone us on **1300 956 321** or email us on [info@firstclasslegal.com.au](mailto:info@firstclasslegal.com.au)

*Current as at November 2018.*

*Liability limited by a scheme approved under Professional Standards Legislation.*

*These FAQs have been prepared to give general information only. You should not rely upon the answers. You should seek specific legal advice in relation to your specific questions.*



## What is Conveyancing?



Conveyancing is the transfer of legal ownership of a property from one person to another. We will make the legal side of the conveyancing process as efficient and hassle-free as possible.

If you are selling, conveyancing will start from the preparation of the Section 32 Vendors' Statement and will follow through to settlement and notifying the rating authorities of the change of ownership.

If you are buying, conveyancing can start with a quick check of the Contract before you commit yourself to buy and will follow through to settlement and notifying the rating authorities of the change of ownership.

## What are the legal terms for a buyer and a seller?

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A buyer is commonly called a purchaser and a seller is commonly called a vendor.

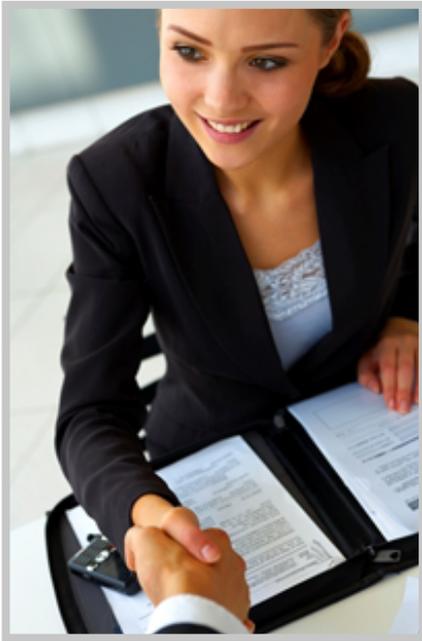
## Why should I use a legal professional to do my conveyancing?

Buying or selling property is one of the biggest financial transactions that you complete in your life. The consequences of making a financial or legal mistake during this process can be both costly and heartbreaking.

By using a professional such as First Class Legal to do your conveyancing and take care of your settlement, you can rest easy, knowing that your sale or purchase will be handled efficiently.



## What is the difference between a Conveyancer and a Solicitor?



Both a conveyancer and a solicitor can help you with a straightforward property purchase or sale.

Only a solicitor can help you with more complex legal issues that sometimes arise during the process.

We will take much of the work and worry of buying or selling a home off your shoulders. In addition to managing the complex process of transferring ownership and ensuring that your interests are fully protected, we will advise you of your responsibilities and rights and deal with any legal issues that may arise from the transaction.

A conveyancer working for a licensed conveyancing business can deal with a standard sale or purchase but will need to refer off any legal work outside the standard conveyancing.

A legal firm like First Class Legal, however, can handle *any* legal issues which may arise.

## Trust account (and the importance of operating one now that electronic settlements are compulsory in Victoria):

It is not compulsory for a conveyancer or solicitor to operate a Trust account (two thirds of conveyancers do not operate a Trust account).

Now that settlements in Victoria are electronic, however, it is important that your legal representative operates a Trust account.

If your deposit is needed for settlement and your real estate agent is still holding your deposit, your agent can only transfer it to your legal representative's Trust account for settlement.

If your legal rep does not have a Trust account, then another firm needs to be instructed (usually at the last minute) causing you angst and extra fees.

## What is “Fixed Fee” Conveyancing?

We charge a fixed fee for conveyancing. This means that we will quote you a fixed, professional fee.

This will be quoted to you in writing at the outset together with the estimated cost of disbursements.



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## What does Disbursements mean?



Any costs that we incur on your behalf in paying a third party for goods or services used to help you are called disbursements.

In a conveyancing transaction, the costs of conducting searches for information about the property are the most common disbursements. These include: a Title search, certificates showing things affecting the property such as proposals for roads and recent building permits and agent's fees to attend settlement.

If the property is affected by an Owners' Corporation, a certificate from the Owners' Corporation (formerly called a Body Corporate) is usually required and costs approximately \$180.



## What is Verification of Identity (VOI) and why is it necessary?

All lawyers, conveyancers and financial institutions must take reasonable steps to verify the identity of each client.

VOI aims to reduce property fraud. It involves a face to face interview, a photograph (taken at the interview) and submitting ID such as: passport and driver's licence.

At First Class Legal, we value our clients' sensitive identity documentation so we outsource our clients' VOI to Zipld and Australia Post. Both services hold the VOI report securely for 7 years as required by legislation.

VOI lasts for 2 years for unlimited property transactions. It applies to all people and entities buying and selling property including: attorneys under Powers of Attorney and directors of companies.

VOI is a mandatory requirement for all parties before settlement can occur.

Ideally, your Client Authorisation Form will be witnessed at your VOI appointment.

## What is a Client Authorisation Form (CAF)?

This Form authorises a conveyancer or lawyer to act as their client's agent and to sign documents such as a Transfer of Land on their client's behalf.

The CAF needs to be witnessed and it is best to do this at your Verification of Identity (VOI) appointment.



## What does Title Search mean and why do I need to have one?

A title search is a search of the database of property ownership maintained by state governments that reveals details of the registered owner of the property at the time of the search.

A title search can also show other important information about the property such as: rights or interests held over the property by the owner or others.

If you are purchasing, either First Class Legal or your bank will do a final search before settlement to make sure that nothing has changed with the Title which will affect you eg someone may have lodged a Caveat.

## What are “Searches” in a conveyancing process?

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As a purchaser, you should make all enquiries you can/do your “due diligence” before you sign the Contract and certainly before the Contract becomes unconditional. The usual legal principle which applies is “buyer beware” (the fancy Latin expression is Caveat Emptor). In plain English, that means that the property is yours once you sign the Contract.

Searches are performed to help a buyer evaluate their purchase and to identify legal, ownership or property issues. The results also provide peace of mind that the property is not subject to any current or known future plans or licenses issued by government nor affected by inclusion on registers such as: heritage listing or environmental management.

Searches also determine whether there are any encumbrances over the title of the property that need to be addressed prior to settlement such as: mortgages, easements, covenants, caveats and any other agreements. If any of these are recorded against the title of a property you plan to buy or sell, we will inform you of your rights and obligations.



## What is a Section 32 Vendors' Statement (commonly called a Section 32)?

A Contract of Sale of Real Estate cannot be signed until the Section 32 has been prepared and signed by the Vendor.

The Section 32 discloses certain information about the property including but not limited to:

- the Vendor's details;
- the Title details;
- information regarding building works done in the past 7 years;
- particulars of any mortgages over the land;
- information regarding covenants, easements and any other restrictions on title;
- planning information;
- details of the amount of rates payable;
- disclosure of any notices or orders issued by the authorities regarding fencing, road widening and sewerage;
- access to the property by road; and
- information on services not connected to the property.

It is very important that the Section 32 is properly prepared as a defective Section 32 can allow a buyer to avoid a Contract penalty-free.

More and more, we are having our clients sign s32s electronically.

## Why is it important that Owner Builder works are disclosed?

If you are selling and have done any building works in the last 7 years, you need to disclose these before a purchaser signs the Contract. If you do not disclose the works, a purchaser has the right to pull out of the Contract at any time up to settlement.

This is a complex area and you need to give us detailed instructions so that we can advise you properly but, in short, any work done to the property including: bathroom makeovers, kitchen renovations, pergolas and decks usually need to be disclosed.

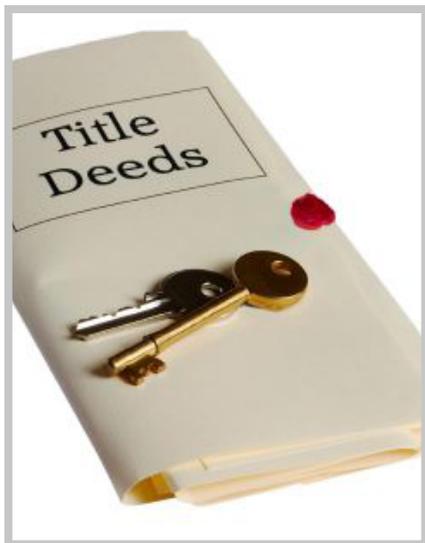
If a building permit was obtained and a registered builder is named as the builder, then the works are generally covered by the builder's insurance and copy permits and associated documents should be attached to the Section 32.

If a building permit was obtained and you are named as the builder OR no permit was obtained, then an Owner Builder Report should be obtained and provided to a purchaser before the Contract is signed. Depending on the value of the works, insurance may also be required.

Please ask us if you have queries about this. It is not worth losing a sale because you did not understand your legal obligations.



## What is a Certificate of Title?



A Certificate of Title (Title Deed) is the record of ownership of a property. In Victoria, Certificates of Title used to be on parchment paper and show the whole history of ownership of the land.

Now, they only show the current ownership details. In Victoria, they are fast being converted to an electronic format. Paper Titles which are being phased out are called pCTs and electronic Titles are called eCTs.

If you have a paper Title, keep it securely as it could be used fraudulently.

## What is Section 27 of the Sale of Land Act (Vic) 1962?

Section 27 ("s27") allows for a mechanism whereby the deposit paid on a property can be released to the vendor/s before settlement. It is commonly referred to as an early release of deposit.

For this to happen, the contract must be unconditional and the purchaser must be satisfied that the total amount of debts secured against the property does not exceed 80 per cent of the property sale price. A purchaser has 28 days to object to the early release of deposit. If the deposit is released early, the selling agent usually deducts his/her commission and fees and releases the balance.

It should never be assumed that the deposit will be released early as s27 provides for a mechanism only. There is no guarantee that the deposit will be released early so a vendor should not rely on the deposit monies to be made available early.

Ask us for a step-by-step informational flyer.

## Foreign Residents Capital Gains Withholding Payment (FRCGW)

The Federal Government introduced a measure to apply to all Contracts of Sale of Real Estate dated on or from 1 July 2016 where the purchase price is \$2 million dollars or more.

For Contracts dated 1 July 2017 onwards, the threshold reduced to \$750,000. ALL vendors must obtain a clearance certificate from the ATO. A Clearance Certificate is valid for 12 months and is vendor specific but not transaction specific.

If a clearance certificate is not produced by the vendor to the purchaser on or prior to settlement, the purchaser must withhold 10% of the purchase price (12.5% if the Contract is dated 1 July 2017 or later) and remit it immediately to the ATO. Penalties apply if a purchaser does not do this.

The FRCGW applies to ALL Australian tax residents and not just to foreign residents. For the purposes of the FRCGW, ALL vendors are presumed to be foreign residents unless they take steps to prove otherwise.

Please speak to us if you think this affects you as we need to plan early to avoid any disruptions to settlement.

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## GST Withholding At Settlement

New Federal legislation commenced on 1 July 2018. The legislation is designed to stop businesses in the property development area failing to remit GST to the Australian Taxation Office (ATO) after a sale settles.

If new residential premises or potential residential land are purchased, the purchaser must pay the GST directly to the ATO as part of settlement.

The changes impose obligations on both purchasers and vendors.

Title will transfer to the purchaser even if the purchaser fails to withhold and pay to the ATO however the purchaser risks administrative penalties.

This is complex legislation and specific advice should be sought.

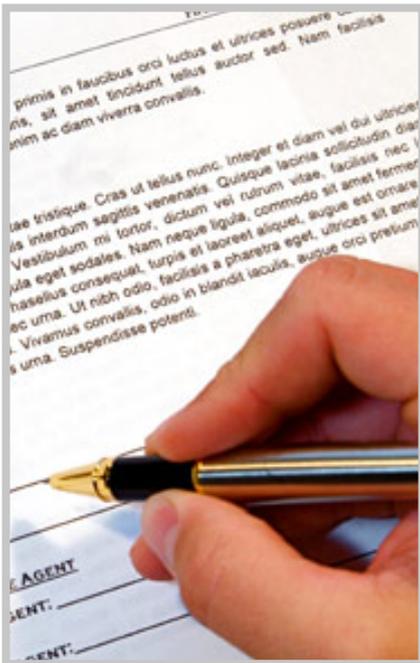


## How does insurance work with the buying/selling process?

Keep the property insured to settlement day if you are selling.

If you are buying, insure it as soon as you buy it. If the property is damaged after sale but before settlement, you want to make sure that it is insured so do not assume that the seller will have (adequate) insurance. Insure the property yourself.

## What do General Conditions and Special Conditions in a Contract of Sale of Real Estate mean?



The General Conditions are the standard terms which are included with the intention of covering many of the most important aspects of a standard transaction. Since each transaction can be different and the parties may have different needs, contracts may also have special conditions added.

General Conditions are included by agreement and can override the standard terms so you need to check the Special Conditions carefully.

We can help you with this either by checking the Contract before you sign it or by helping to draft the Special Conditions.

There is actually no longer a prescribed Contract in Victoria so having it checked by a professional is more important than ever.

## Why would you get a Pre-Purchase Building and/or Pest Inspection?

Once you sign a Contract to purchase a property, it is yours and the general rule of “caveat emptor” or “buyer beware” applies. Consequently, you should do your due diligence before you sign. An aspect of due diligence is a pre-purchase building and/or pest inspection.

If you don't obtain building and pest reports, you may find that your dream house is infested with termites or in need of urgent repairs. Unfortunately, once the Contract is signed, those issues (as expensive as they may be to fix) are your problems as the buyer of the property.

A building and/or pest report is an inexpensive exercise compared with the cost of eradicating pests or fixing building issues.

You may not want to spend money on a building and pest report before you are the successful buyer. If so, you should ask for a Special Condition to be inserted into the Contract giving you a period of time to obtain a building and/or pest report that is satisfactory to you. Ask us for help in drafting the Special Condition as some wording favours a buyer and some favours a seller.

Bear in mind that an auction purchase is unconditional so any inspection reports will need to be done before auction day.

## What is the “Cooling Off Period”?

Buying a property is likely the highest value transaction that you undertake in your life. It can also be a very emotional decision and, sometimes, you may buy a property without doing all due diligence.

The cooling-off period is a consumer protection provision that gives you the chance to “cool off” from your initial decision after you have had a further chance to review.

During the cooling-off period (within three clear business days of the buyer signing the Contract), the buyer can change his/her mind and cancel the contract. There is a monetary penalty if a buyer chooses to “cool off”.

Cooling off periods do not apply in some cases. One situation where you cannot “cool off” is buying at auction (or within 3 clear business days either side of an auction).

You have to be careful to “cool off” properly so speak to us please and we will advise you.



## What is different about buying at auction?

***Buying at auction is unconditional so make all your enquiries and have your finance in place.***

Think seriously about a building and pest inspection before auction day as, if you are the successful bidder, the property is yours no matter whether there is a family of termites living in it!

## Should I buy subject to finance?

Pre-approval is certainly a good idea but it is not unconditional approval. Pre-approval is usually subject to a valuation of the property that you actually buy.

## What is a property valuation?



A property valuation is a central step to buying a home if you are needing finance.

A finance pre-approval is usually conditional upon a valuation of the property you actually buy.

A property valuation or market appraisal may be required for stamp duty purposes. We will advise you if this is the case.



## What is Joint Ownership/Joint Tenancy?

This is usually the choice of couples and each owner has an equal, undivided share of the property.

Joint Ownership or Joint Tenants means that, if one of the owners of the property dies, the property is automatically transferred to the surviving proprietor irrespective of what is stated in their own Will.

A legal document called an Application by Surviving Proprietor is required to be lodged but Probate is not required.

## What does Tenants in Common mean?

This is usually the choice of unrelated parties or people who wish to keep their assets separate.

It means that each owner's share of the property (whether they be equal or not) is owned entirely by that owner and, upon death, it can be transferred to whomever they please so long as it is stated in their Will. (If there is no Will, then the laws of intestacy apply but the share of the property is still treated as a separate asset of the person who has died).

## What is Stamp Duty?

When you buy a property, you will usually need to pay a State government fee known as "stamp duty". Limited exemptions and concessions may apply in some cases. We can advise you about this. You can also see current and detailed information at [www.sro.vic.gov.au](http://www.sro.vic.gov.au)

The amount of stamp duty is determined by the purchase price of the property together with any concession that you may be entitled to.



## Am I eligible for Stamp Duty concessions?

Please note that this information is subject to change and should always be checked with the State Revenue Office (SRO). The SRO website is comprehensive and even has online calculators for you to calculate the stamp duty payable and any applicable concessions. Please ask us for more information or go to [www.sro.vic.gov.au](http://www.sro.vic.gov.au)

Briefly, *some* of the most common stamp duty concessions are:

- First Home Buyer (this is separate from the First Home Owners' Grant);
- Principal Residence;
- Pensioner Exemption or Reduction; and
- Off the Plan (*for Contracts dated 1 July 2017 or later, the Off the Plan concession no longer applies to investor purchases*). Please note that, even if you are buying off the plan to live in as your principal residence, there are still monetary thresholds which apply before you are eligible for any concession.

*Please note there are strict eligibility requirements for the FHOG and any stamp duty concessions.*

*There is also an entire section of the SRO devoted to Compliance ie making sure that only those entitled claim concessions. Speak with us to make sure that you are applying for the right concession/s.*

*Penalties (in addition to repaying any wrongly-received concession) apply if you claim and receive a concession to which you are not entitled.*

## What is a Strata Title?



There are certain different forms of property ownership that have been created as a result of the way we live and use property. Strata Title is a common form of property ownership and is most commonly associated with units or multi-level buildings.

Usually, owners will have rights and obligations that relate to the shared nature of common property such as: driveways, lifts and foyers.



## What is Title Insurance?

During your conveyancing transaction and with any property purchase, there are a number of risks present which even the most stringent due diligence cannot guard against nor prevent.

To protect against these types of risks, you should consider a Title Insurance Policy. For a once only premium (starting at less than \$500), you can purchase a title insurance policy.

Title insurance includes protection against several issues including: illegal building structures, fraud and forgery, misdescription of land, boundary disputes, easements and zoning problems – all of which can result in a significant financial loss. For more specific information about Title insurance, please contact us.

Title insurance is available to purchasers or existing owners of residential and commercial property.



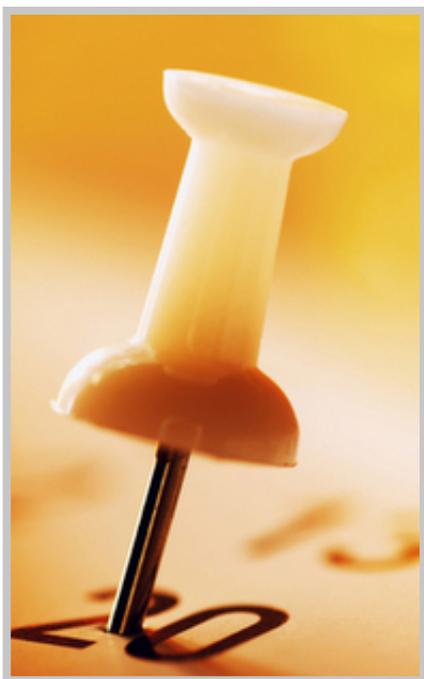
## What is a Purchaser's Caveat?

We recommend that a Caveat be lodged in the Titles Office to protect your interest as purchaser. By doing so, you will be telling anyone else who tries to deal with the property that your rights come first.

We believe that the cost of a caveat is well worth the peace of mind it offers.

## What are key dates to be aware of during the conveyancing process?

There are several key dates, including:



- The contract date – the date when all parties have signed the contract and agreed to its terms. Other key dates may be expressed with reference to this date e.g. “45 days after the contract date”.
- The “cooling off” period. This is the period within three clear business days of the buyer signing the contract during which buyer can terminate the contract without needing to rely on a term of the contract. There is a monetary penalty to a buyer for doing this.
- The finance approval date – the date by which a buyer must advise the seller that finance approval has been obtained.
- The building and pest inspection date – the date by which a buyer must indicate to the seller their satisfaction or otherwise with the inspections they have obtained. You should get a licensed inspector to perform the inspection as quickly as possible to meet this date.
- The settlement date – the date on which settlement of the transaction is scheduled to occur.

While both parties may agree to change these dates, it is not always possible to reach agreements to change after the contract is signed.

## Rubbish and deterioration – what are my rights?

A purchaser is entitled to the property being handed over at settlement in the same state it was when sold save fair wear and tear.

You have a right as a purchaser to a final inspection in the week before settlement. This should be organized ahead of time and preferably a few days before settlement so any last minute issues can be sorted out before settlement.

A purchaser does not usually have the right to hold up settlement because he/she is unhappy about the state of the garden nor the state of cleanliness of the property.



## What happens at settlement?

Settlement used to be the day on which the representatives of all parties, including any banks, met (usually in the CBD) at a prearranged time to exchange documents for cheques.

Now, though, settlements in Victoria (with a few exceptions only) are mandated to be electronic. Currently, the only platform is PEXA (Property Exchange Australia Ltd).

Parties now collaborate in an electronic workspace and, once settlement has been effected, the vendor receives cleared funds in their bank account and the purchaser is registered on Title. (These things used to take days and weeks respectively in the paper settlement world).

***We believe that electronic settlements are far better for clients – faster, more accurate and more transparent.***



## 6 mistakes people make when choosing a professional to handle their conveyancing:

**1 (2, 3, 4,5 and 6)** - are choosing on price alone. "Pay peanuts, get monkeys" and "You get what you pay for" are tried and true expressions. A property purchase or sale is a significant one. For most of us, it is the highest value transaction/s of our life so don't penny pinch.

Choosing a "no frills" conveyancer can cost you dearly if there are issues; far more than what you think that you are going to save by engaging them.

Also, beware the "cheap quote" which may not include hidden extras. At First Class Legal, we are not the cheapest.

We do not try to be the cheapest.

We will, however, disclose all our fees up front and give you a professional service.

**2** Don't choose a friend of a friend unless they can give you the professional service you need. Don't be fooled that "anyone can do conveyancing". Mistakes will cost you dearly.

**3** Don't feel that you need to choose a local firm. You may not even need to come into the office. Having said that, First Class Legal has several offices in the CBD and suburbs of Melbourne so coming into see us or dropping off documents (to save the snail mail) is super easy. We have an overnight, secure mail service between our offices so you can drop something off to any office and it will arrive at the desired office the next business day.

**4** Don't use a conveyancer who is stuck in the past. Use a professional who has electronic files stored in the cloud which all staff can access (if your file handler is away) and who has secure email.

**5** Don't use a conveyancer who doesn't have time/interest in keeping up to date. Conveyancing is changing rapidly and you do not want to engage someone who is going to use an out of date form or process which then costs you in stress (and/or money) as settlement needs to be delayed.

**6** Don't use a conveyancer who doesn't operate a Trust account. If your deposit is needed at settlement and it hasn't already been released to you, it can only be transferred to your legal representative's Trust account (problematic if your legal representative does not operate a Trust account).

At First Class Legal, we invest heavily in training our staff and in continuing professional development.

We are always innovating and we are at the forefront of change.

**First Class Legal was the first legal firm in Melbourne to do an electronic settlement (April 2015), we were the first in Victoria to prepare an electronically signed auction contract for a residential property (September 2016) and we were the first to facilitate an end to end paperless conveyance (January 2017).**

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**Offices in:**

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