

**A GUIDE TO GUARDIAN SERVICES
IN UTAH**

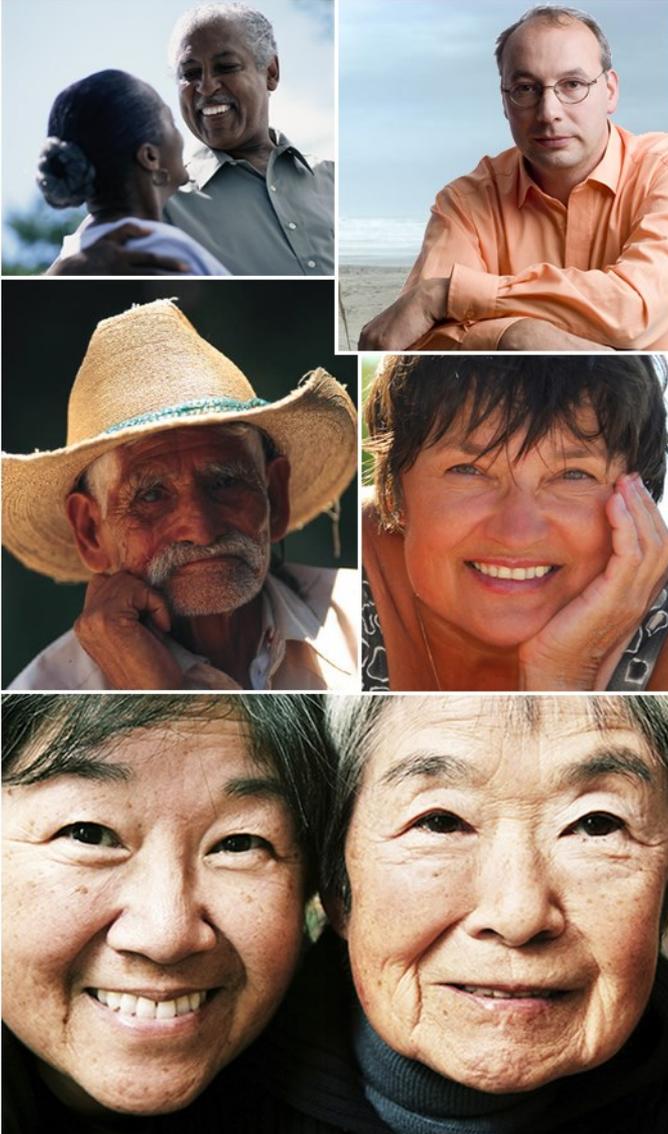


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☞ WELCOME ☞

This guide briefly describes guardianship and conservatorship services and resources in Utah.

Office of Public Guardian

The agency responsible for providing public guardianship and conservatorship services to incapacitated adults. The Office was established by the 1999 Legislature in response to longstanding concerns about incapacitated adults without family members or friends to serve as their guardians.

Please call the Office of Public Guardian at 801 538-8255 if you need more information or to make a referral. You can access the Office of Public Guardian website at **www.opg.utah.gov**.

The information provided here is not intended as legal advice. If you have specific legal questions or concerns, you should consult an attorney.



What is guardianship?

Guardianship is a legal arrangement through which a person (the guardian) is legally authorized to make decisions for another person (the protected person).

When is guardianship necessary?

Sometimes people become incapable of making minimally adequate decisions about medical treatment, everyday life or other important matters, and as a result their health and safety are in jeopardy. Under Utah law, a court may appoint a guardian to make decisions for a person when this happens and there are no voluntary arrangements through which the person can be assisted in making adequate decisions.

To appoint a guardian, the protected person must be incapacitated. “Incapacity” means that an adult’s ability to receive and evaluate information; make and communicate decisions; or provide for necessities such as food, shelter, clothing, health care, or safety are so impaired that the person lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care. Incapacity is a judicial determination, and is measured by the person’s functional limitations. Utah Code Section 75-1-201.



Is there more than one kind of guardianship?

In appointing a guardian, the court may grant either a “limited guardianship” or “full guardianship”. Utah law requires the court to grant a limited guardianship unless a full guardianship is necessary. A limited guardianship authorizes the guardian to make the decisions specified in the court order. In some cases, however, the court may find that a full guardianship is necessary, and the court may authorize the guardian to make almost all decisions for the protected person. Generally, a guardian makes decisions about the protected person’s basic needs, such as residence, medical care and other needed services.

In addition to guardianship, Utah law provides for appointment of a “conservator” if a person is incapable of making important financial decisions.

The court may place an incapacitated person under a guardianship or a conservatorship or both, depending on the kind of decisions the person is incapable of making.

This handbook is only about guardianship for adults (all persons 18 years of age or older).

What are the responsibilities of a guardian?

Under a limited guardianship, a guardian may only make those decisions that the court has authorized the guardian to make. This may include the authority and responsibility for some, but not all of the decisions identified below:

- Determining where the protected person lives
- Making sure that the protected person's basic needs (including food, clothing and comfort) are met
- Making decisions about the protected person's health care, habilitation and treatment
- Keeping track and taking care of the protected person's property and personal possessions
- Making some financial decisions for the protected person, if the protected person does not have a conservator
- Protecting and advocating for the protected person's rights.

Under a conservatorship, the conservator is generally responsible for:

- Using the protected person's income and financial resources to provide for the person's care, support and comfort, and to pay the person's bills and debts
- Keeping track and taking care of the protected person's property and personal possessions
- Investing or selling the protected person's assets and property, if this needs to be done to meet the person's needs.

Guardians must report to the court annually about their guardianship activities, the condition of the protected person, and the status and condition of the protected person's estate.



Are guardians responsible for the financial, civil, or criminal acts of protected persons?

Generally, no. Guardians are not legally obligated to use their own funds to provide for the protected persons. Nor is a guardian generally liable for financial acts of the protected person. The law does require, however, that a guardian use the protected person's funds only in the protected person's interest. A guardian may also be held responsible for the protected person's acts if the guardian has been negligent.

What should guardians consider in making decisions for protected persons?

The Office of Public Guardian recommends that guardians follow the decision-making guidelines of the National Guardianship Association (NGA). Under these guidelines, a guardian should first consider any preferences or wishes expressed by a protected person before the protected person became incapacitated. If the protected person's preferences can be determined, the guardian should honor those preferences.

If preference is not known, the guardian should act as a "substitute decision-maker" and make decisions based on what the protected person would want, if the protected person were not incapacitated. The guardian should:

- Determine the protected person's current wishes, if possible
- Consider the protected person's values, culture, religious beliefs and personal history
- Consult with the protected person's family, friends and health professionals who are likely to know of the protected person's preferences and wishes

The guardian should use substitute decision-making to make decisions for the protected person unless the guardian concludes that the protected person will experience serious and unacceptable harm from a decision.

In situations where the above decision-making methods are not possible or acceptable, the guardian should make decisions based on the “best interest” of the protected person. This means making an informed decision, after consulting with professionals knowledgeable about the proposed action and weighing the reasons for the proposed action, the risks and benefits and the available alternatives.

Whatever decision-making guidelines guardians use, guardians always have a legal duty to make decisions that protect the rights, interests and well being of their protected persons.

Who can become a guardian?

Any competent adult and some agencies can be appointed as a guardian. The law gives preference, however, to appointment of the following persons in the following order:

- Persons suggested by the protected person, in the event the protected person is capable of expressing a preference
- Close and appropriate family members of the protected person
- Other specified persons

How is a guardianship established?

Any person who believes that another person needs a guardian may file a petition for appointment of a guardian with an appropriate state district court. Usually an attorney represents the person filing the petition “the petitioner”. In addition, the petitioner may arrange for the proposed protected person to be examined by a physician or psychologist. Unless a physician or psychologist has concluded that the proposed protected person is incapacitated, it is unlikely that a court will grant the petition.



After receiving a petition, the court schedules a hearing. Various persons, including the proposed protected person, must be notified of the hearing. If the proposed protected person does not have a lawyer or cannot afford a lawyer, the court will appoint one. At the initial hearing the judge may schedule a trial, or if the judge finds no opposition to the petition, the judge may grant the petition.

At the trial, if one is necessary, the judge or jury may hear testimony from persons in support of and in opposition to the petition, including the proposed protected person and the protected person's family, friends and physician. In addition, the judge may appoint qualified individuals called court visitor to observe and report back to the court about the condition of the proposed protected person, the proposed protected person's current place of residence and the proposed place of residence. At the conclusion of the hearing or trial, the judge or the jury decides whether or not to grant the petition.

What does a guardianship cost?

There are several different sets of costs that may come from a guardianship.

The first set of costs comes from establishing a guardianship. These are usually limited to court fees and lawyer's fees. In cases where both the petitioner and the proposed protected person have limited financial resources, the court may be asked to waive the fees. Lawyer's fees vary considerably and should be discussed.

Persons considering filing for guardianship or persons facing the possibility of guardianship are advised to shop for legal services. Cost may be one factor in selecting a lawyer but it probably should not be the only one. A person may also want to inquire about a lawyer's knowledge and experience in filing guardianship petitions or representing persons contesting guardianships (many lawyers are not familiar with this area of the law). In addition, a person should be comfortable with and have trust in the lawyer.

Limited low cost and no cost legal services are available to persons with low incomes. In addition, the Utah Bar operates a referral service through which an initial consultation with a lawyer may be obtained for a modest fee.

Under certain circumstances, the petitioner for a guardianship may be reimbursed for legal expenses incurred in establishing a guardianship from the estate of the protected person. However, this is a decision only the court can make. If a petition for guardianship is denied, the petitioner may be responsible for both the petitioner's expenses *and* the proposed protected person's legal expenses.

The second set of costs comes from administering a guardianship. Guardians may be reimbursed for reasonable costs for their services and expenses from the protected person's estate. A guardian may need authorization from the court to be reimbursed for some costs. A guardian is required to provide the court with an annual accounting of the protected person's finances and estate. Specific requirements in this area depend on the size of the protected person's estate and the specific powers and duties of a guardian or conservator. For specific information, you should consult a lawyer.

What rights do proposed protected persons have?

Under Utah law, every person who faces the possibility of guardianship has certain rights. The law presumes that *all* adults are capable of making their own decisions, unless and until a court finds otherwise. In addition, proposed protected persons have certain "due process" rights, including the right to:

- Receive notice of the hearing in a language the person understands
 - Be represented by an attorney
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- Attend the hearing or trial and see and hear the evidence that is presented
- Present evidence in opposition to the petition for the guardianship and/or cross-examine witnesses
- A jury trial

These rights are crucial because they serve as part of a system of checks and balances on guardianship. It is important to remember that even though guardianship may be necessary and very helpful, guardianship limits the self-determination of the person placed under it. There are few legal processes more restrictive of citizens in a free society than guardianship.

What rights do protected persons have?

Persons placed under guardianship continue to have rights. Protected persons under limited guardianship retain all rights except those rights the court has specifically granted their guardian. And regardless of the type of guardianship, all protected persons retain certain rights. For example, all protected persons have the right to make personal choices where those choices pose no risk of harm to the protected person or others, including the right to:

- Dress and groom themselves as they wish
- Choose what they eat
- Keep a personal routine
- Choose their friends and associates
- Keep and use personal possessions
- Private time and space
- Be intimate with others of their choosing
- Know why decisions about them are made and appeal those decisions they disagree with



In addition, protected persons have the right to:

- Ask the court to end a guardianship, appoint a different guardian or modify a guardianship
- Not be sterilized

Guardians have a special responsibility for the rights of protected persons. This responsibility includes protecting the protected persons' rights and supporting the protected persons' in exercising their rights and privileges. Rights and privileges mean nothing unless they can be exercised. Protected persons should be involved in the decision making process whenever possible. Without such opportunities and experience, protected persons will not be able to develop or re-develop the ability to manage their affairs independently.

When does guardianship end?

In Utah, guardianship ends when:

- The court finds that a protected person is capable of making responsible decisions and managing his or her affairs
 - The guardian wishes to resign and the court agrees to accept the guardian's resignation
 - The guardian becomes incapacitated or dies
 - The court removes the guardian for some reason
 - The protected person dies (the guardian still needs to petition the court in order to end his/her responsibilities to the court)
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How are guardianships provided in Utah?

In most instances, close family members or friends choose to be appointed as guardian of the incapacitated person. Family members and friends are usually in the best position to make decisions for protected persons because of their first-hand knowledge of a protected person and what a protected person would want if the protected person were able to make his or her own decisions.

Who else provides guardianship services?

In Utah, several private guardianship agencies serve as guardians on a fee-for-service basis. Some provide services directly, while others provide services under contracts with the State.

The Office of Public Guardian (OPG) is the Utah state agency responsible for providing public guardianship and conservatorship services to incapacitated adults. OPG serves as guardian for persons who have no one else to serve as their guardians. OPG services include:

- Information, referral, and education about guardianship
- Assessment for guardianship
- Petitioning the court for guardianship
- Alternatives to guardianship
- Guardianships and conservatorships
- Protecting and advocating for the rights and interests of OPG protected persons



What are the alternatives to guardianship?

Because guardianship is restrictive, it should always be used as a last resort. Some decision-making tools and voluntary arrangements that may be used as alternatives to guardianship include:

- *Money management services.* Banking services, such as direct deposit and direct payment, may help persons who have trouble keeping track of their money and paying their bills. These services require the consent of the person in need of help.
 - *Representative or protective payee.* Payee is an arrangement with Social Security or other income source such as, the Veteran's Administration or retirements where a third party (the payee) is appointed to manage and be accountable for the income a person receives. A payee is only less restrictive than guardianship if a payee respects the limits of his or her authority.
 - *Advance health care directives.* Advance directives are written documents that a competent person can create which tell other people how the person wants to be cared for in the event he or she becomes incapable of making decisions. A number of different kinds of advance directives are available in Utah, including a living will, a special power of attorney (for health care), a medical treatment plan, and a declaration for mental health treatment. The Utah Advance Healthcare Directive combines a Health Care Power of Attorney and a Living Will into one document. The Utah Advance Healthcare Directive can be found on www.hsdaas.utah.gov.
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What are the alternatives to guardianship? (continued...)

- *Trusts.* A trust is a legal arrangement in which a person or institution (“trustee”) holds title to property for the benefit of another person or persons (the “beneficiaries”). Trusts can be very useful for planning for incapacity. There are many types of trusts.
- *Joint Ownership.* Two or more people may own property jointly if they agree to do so. Many people have joint bank accounts or jointly own an automobile, a home, stocks and bonds. Joint ownership can be a convenient way to manage property and/or income of a person who is incapacitated or is having problems managing his/her property. However, joint ownership has the potential for abuse.





PUBLIC GUARDIANSHIP AGENCY

Below is a list of agencies that serve as guardians or conservators or both for incapacitated adults. Please note that the services, eligibility criteria and fees of these agencies vary.

You should contact an agency directly if you want to obtain services or know more about the agency.

Office of Public Guardian (OPG)

195 North 1950 West
Salt Lake City, Utah 84116
801 538-8255 phone
www.opg.utah.gov

The Office of Public Guardian is the state agency responsible for public guardianship and conservatorship services in Utah. Please call to make a referral or discuss questions.

Services: Information, referral and education. Guardianship and conservatorship assessment. Limited and full guardianships and conservatorships. Alternatives to guardianship and conservatorship.

Eligibility: Direct services are limited to incapacitated persons who have no one to serve as their guardians or conservators. Priority is given to persons who are in life-threatening situations, or who are experiencing abuse, neglect, self-neglect or exploitation, or who are at significant risk of experiencing such problems.

Other Info: OPG guardians are National Certified Guardians by the National Guardianship Association or are working to obtain NGA certification.





PRIVATE GUARDIANSHIP AGENCIES

Guardian Advocate Services, LLC

111 East Broadway, Suite 250
Salt Lake City, Utah 84111
801 433-0461 phone
www.guardianadvocateservices.com

A private consultation, guardianship, and care management company serving older and incapacitated adults in Salt Lake City, Utah and surrounding areas. Services: private and/or court appointed Guardianship, Care Management Review, Court Visitor services, Capacity Evaluations, Expert Witness Testimony.

Call agency and/or visit website for eligibility and fee information.

Stagg Fiduciary Services, LLC

111 East Broadway, Suite 250
Salt Lake City, Utah 84111
801 433-0460
www.staggfs.com

A private conservatorship service that works in tandem, when needed, with Guardian Advocate Services, LLC.

Services: Conservatorship, Trustee, Private Payee, Personal Representative.

Call agency and/or visit website for eligibility and fee information.





Guardianship Associates of Utah

825 North 300 West, Suite W306
Salt Lake City, Utah 84103
801 533-0203
www.guardianshiputah.org

Services: Guardianship, information and referral. Assisted Family Guardianship program.

Eligibility: For public-funded guardianship services: Referral from Office of Public Guardian (OPG). For private services: people with disabilities and mental issues, incapacitated adults, and the elderly.

Fee: For publicly-funded services: Current state rate. For private guardianship services, contact agency.





Guardian & Conservator Services, LLC

716 East 4500 South, Suite N160
Salt Lake City, Utah 84107
801 281-1100

www.guardianconservatorservices.com

Provides Utah Probate Court appointed private guardianship of person services, and private conservator, trust and other fiduciary services throughout the state of Utah.

Call agency and/or visit website for eligibility and fee information.

Other Information- Guardianship under the direction of a licensed clinical social worker (LCSW) and Registered Guardian with the National Guardianship Association since 1999, and conservatorship under the direction of a certified public accountant (CPA). All staff members are trained with special emphasis in working with the elderly and people with disabilities.

Age Connections

716 East 4500 South, Suite N160
Salt Lake City, Utah 84107
801 281-1100

www.ageconnections.com

Specializes in providing private geriatric care management, consultation and non-medical in-residence private services.

Call agency and/or visit website for eligibility and fee information.





LEGAL SERVICES AND ASSISTANCE

Below is a list of agencies and programs through which legal advice and legal representation on guardianship and conservatorship may be obtained. Please note that some agencies and attorneys only represent certain parties in guardianship proceedings. Possible parties include:

- *“Petitioner” -- person filing to be appointed guardian of an allegedly incapacitated person*
- *“Proposed protected person”-- person alleged to be incapacitated and in need of a guardian*
- *“Protected person” -- person found to be incapacitated and appointed a guardian*

Legal Aid Society of Salt Lake

205 North 400 West
Salt Lake City, Utah 84103-1125
801 328-8849
www.legalaidsocietyofsaltlake.org

The Legal Aid Society of Salt Lake is non-profit organization that promotes safety, stability, and self sufficiency to low-income families and individuals, as well as victims of domestic violence, through effective, efficient legal advocacy and assistance.

Services: Representation of proposed protected persons and protected persons wanting to contest proposed or existing guardianships.

Eligibility: Legal Aid Society maintains a Guardianship program wherein Legal Aid Society will represent the proposed protected person when the State of Utah’s, Office of Public Guardian files a guardianship petition against an incapacitated person and the protected person does not have the resources to obtain council.

Fee: Please call or visit website



Utah Legal Services, Inc.

205 North 400 West
Salt Lake City, Utah 84103
801 328-8891
800 662-4245 (toll free)
www.andjusticeforall.org/uls

Utah Legal Services (ULS) provides legal services to low-income persons throughout Utah on matters of civil law including guardianship.

Services: ULS may assist proposed protected persons and protected persons who want to contest a proposed or existing guardianship.

Eligibility: Services in guardianship matters are provided in most counties of Utah to persons age 60 years or older irrespective of income.

Fee: Please call or visit website

Lawyer Referral Service of the Utah State Bar

801 531-9077 or 800 698-9077 www.utahbar.org

Provides names of private attorneys who handle cases for a fee.

Website provides links for legal resources and information.

Utah State Courts - www.utcourts.gov

Website contains detailed and comprehensive information on Guardianship and Conservatorship.



OTHER SOURCES OF INFORMATION

The following is a partial list of other public agencies which may be of assistance.

Adult Protective Services

Utah Division of Aging and Adult Services
195 North 1950 West
Salt Lake City, Utah 84116
Intake Numbers 801 538-3567 (in Salt Lake County)
800 371-7897 (in all other areas of the state)
www.hsdaas.utah.gov

Services: Investigation of allegations of abuse, neglect, self-neglect or exploitation of adults with mental or physical impairments, and elderly adults.

Eligibility: Any person 18 years of age or older who has a mental or physical impairment and any person 65 years of age or older. Referral must concern abuse, neglect or exploitation.

Fee: None for investigative services

Other Info: State law requires that any person who has reason to believe that an adult with a mental or physical impairment or an elderly adult is being abused, neglected or exploited to report such information to local law enforcement or Adult Protective Services.



Long-Term Care Ombudsman

Utah Division of Aging and Adult Services
195 North 1950 West
Salt Lake City, Utah 84116
801 538-3924
www.hsdaas.utah.gov

The Long-Term Care Ombudsman advocates for frail and vulnerable older persons living in nursing, assisting living, small health care facilities and adult foster care homes.

Services: Investigate and resolve complaints concerning care, treatment and rights of residents of long-term care facilities.

Eligibility: Residents of long-term care facilities who are 60 years of age or older. In some cases, residents under 60 may be eligible.

Fee: None

Other Info: Complaints are referred to local ombudsmen who work with management of long-term facilities, families of residents and state agencies to protect residents and increase the quality of residents' lives. Information about how to contact the local ombudsman is posted in long-term care facilities. Additional information may be obtained by contacting the State Long-Term Care Ombudsman at the above number.



211 INFO BANK

**Dial 211 or
1 888 826-9790
Available statewide**

Services: Free information and referral service for health, human and community services throughout the State of Utah.

www.informationandreferral.org

Fee: None

NAMI Utah

National Alliance on Mental Illness of Utah

801 323-9900

www.namiut.org

Utah's NAMI mission is to ensure the dignity and improve the lives of those who live with mental illness and their families through support, education and advocacy.





State Of Utah—Division of Substance Abuse & Mental Health

Program Manager
195 North 1950 West
Salt Lake City, Utah 84116
801 538-4378
www.dsamh.utah.gov

Services: Provides information about services available through Utah’s public substance abuse & mental health system. Provides information about mental health consumer Advanced Directive/Self-Management Plans.

Eligibility: Any person or family member who has mental illness or substance abuse problems, or persons wishing to obtain information about substance abuse & mental illnesses within Utah’s public mental health system.

Fee: None



Area Agencies on Aging (AAA)

Area Agencies on Aging provide a link to in-home services, or services that provide temporary relief for persons caring for an individual who is ill, injured or frail (also known as respite services).

Other services include:

- Home –delivered meals
- Congregate meals
- Adult day programs
- Care management
- In-home aide service
- Information and assistance
- Senior center programs
- Transportation
- Health promotion
- Housing and home-improvement
- Medication management
- Abuse, neglect or exploitation education and awareness

The availability of these services varies in each county.

Contact the Utah Caregiver Support Program at your local Area Agency on Aging, or visit the Division of Aging and Adult Services' online directory of local services at www.hsdaas.utah.gov.

Utah Division of Aging and Adult Services
801 538-3910 or 877 424-4646



Resources for Family Caregivers

Utah Coalition for Caregiver Support **www.caregivers.utah.gov**

The Utah Coalition for Caregiver Support (UCCS) was established in March 2002. It has grown to include 32 member organizations from around the state. This diverse group meets monthly to discuss an issue they all share—**caregiving**.

Ucare “If a loved one leans on you, lean on us”. **www.ucare.utah.gov**

This comprehensive website provides information and links to information for people that are aging, have a disability or mental illness.

Alzheimer’s Association, Utah Chapter 800 272-3900 **www.alz.org/utah**

Provides education and support for people diagnosed with Alzheimer’s disease and other dementia, and to their families and caregivers.

Nursing Home and Home Health Care Quality Initiative

866 708-1944, ext. 625
www.health.utah.gov/rxconnectutah

Provides detailed information on past performance of every Medicare and Medicaid certified nursing home and home health agency in the state.



Mission Statement

The mission of the Office of Public Guardian is to serve as guardian for incapacitated and eligible adults.

We provide guardianship assessment, surrogate decision-making, advocacy, coordination of services and financial management to our protected persons. We also provide education on guardianship and alternatives to guardianship.



**DEPARTMENT OF HUMAN SERVICES
OFFICE OF PUBLIC GUARDIAN
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SALT LAKE CITY, UTAH 84116
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2014**