

HAWAII CONDOMINIUM BULLETIN



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Selected 1997 Legislative Acts Affecting Condominium Property Regimes

The following discussion highlights some of the statutory amendments to Hawaii Revised Statutes (H.R.S.) Chapter 514A, Condominium Property Regimes, made by the 1997 Legislature. Readers are advised to consult the full text of the Acts, as this discussion is intended only to briefly summarize the amendments and does not constitute legal advice. For specific advice as to how provisions of H.R.S. Chapter 514A apply to a particular circumstance, readers should seek the advice of a licensed Hawaii attorney familiar with condominium law.

Act 40 (SB 1510) Effective April 22, 1997 Regarding Notarized Signatures

First, Act 40 amends H.R.S. Section 514A-12, regarding filing condominium floor plans, by repealing the notarization requirement for architect or engineer statements. Second, H.R.S. Section 514A-32, regarding the questionnaire and

filing fee that a developer must file along with the notice of intention to sell condominium units, is also amended to eliminate the questionnaire notarization requirement. Finally, H.R.S. Sections 514A-40(a) and (b), regarding final reports, are likewise amended to remove the notary requirement for the statement of costs to complete the project, the estimate of time of construction

completion, and the zoning and building compliance statement signed by a county official.

Act 133 (HB 780 HD1 SD1) Effective June 16, 1997 Regarding Budgets and Reserves

H.R.S. Section 514A-83.6(a) is amended to require condo-

See Acts on pg. 4

Hurricane Season and the Importance of Condominium Associations and Owners Obtaining Flood Insurance

Hawaii's hurricane season officially begins on June 1 and runs through November 30 according to experts at the National Weather Service in Hawaii. These experts predict that the current El Nino season carries a greater possibility that Hawaii may be affected by hurricane activity, and are urging island residents to be prepared. Condominium associations and owners should also be prepared by obtaining condominium flood insurance if they are located in special flood hazard areas.

Hawaii Revised Statutes (H.R.S.) Section 514A-86(a) mandates that all associations of

apartment owners shall maintain flood insurance if the condominium is located in an identified flood hazard area as designated by the Federal Emergency Management Agency (FEMA). The following information highlights why it is important for condominium associations and owners located in special flood hazard areas to obtain flood insurance.

This general information was provided to the Real Estate Commission by FEMA Region IX but is not intended to constitute legal advice or function as a condominium flood insurance primer.

In addition to the mandatory requirement stated in H.R.S. Section 514A-86(a), condominium associations located in special flood

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Letter from the Chair...

Dear Condominium Owners:

This is my inaugural "Letter from the Chair" since succeeding Carol Mon Lee as the chair of the Condominium Review Committee in July 1997. I look forward to serving in this capacity and extend my sincere thanks to Carol for her years of dedicated service leading the committee and faithfully writing this column.

In June the Real Estate commissioners and staff bid aloha to outgoing Commissioners Barbara Dew and Stanley Kuriyama. Mahalo for your outstanding leadership as the chair and vice-chair of the Commission, and for the countless hours invested to serve the industry and the public!

The Commission and staff then welcomed two new members to the Real Estate Commission in July: Mitchell Imanaka and John Ohama. Commissioner Imanaka serves as the vice-chair of the Condominium Review Committee and as a member of the Laws & Rules Review Committee and the Education Review Committee. Commissioner Ohama is serving as a member of the Condominium Review Committee, the Education Review Committee and the Laws & Rules Review Committee.

This issue of the Hawaii Condominium Bulletin contains many articles of interest, including an update of the amendments made to H.R.S. Chapter 514A, Condominium Property Regimes, by the 1997 Legislature; a hurricane season article regarding the importance of obtaining condominium flood insurance; a Reference File update indexing issues contained in the Hawaii Condominium Bulletin during Spring 1996 - Fall 1997; and an article about the Summer and Fall 1997 Joint Condominium and Real Estate Specialists "Office for the Day" on Kauai, Maui and the Big Island.

For those of you who will be on Maui on Friday, November 7, 1997, don't miss the opportunity to make an appointment to meet with the senior condominium and/or real estate specialist at the RICO office in Wailuku.

Aloha,
Alfredo G. Evangelista, Chair
Condominium Review Committee

Ask the Condominium Specialists

Q. Can a lessee become a member of the condominium association?

A. It's possible. Although owners generally constitute the membership of a condominium association, Hawaii Revised Statutes (H.R.S.) Section 514A-3 defines an apartment owner as: "the person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease registered under chapter 501 or recorded under chapter 502, a lessee of an apartment shall be deemed to be the owner thereof." Thus, if the lease filed with the Board provides for lessee membership in the condominium association, or grants rights commonly associated with condominium ownership such as the right to vote in the association, then the lessee may be considered an owner for purposes of membership in the condominium association. Lessees are advised to carefully check the specific terms of their lease before attempting to exercise condominium association membership rights.

Q. Do I have a right to keep my pet if my condominium's bylaws were amended to prohibit my type of pet after I acquired it?

A. More than likely. H.R.S. Section 514A-82.6(b) mandates that any condominium owner who is keeping a pet in their unit, as of the effective date of an amendment to the bylaws which prohibits owners from keeping such pets in their unit, shall not be subject to the prohibition and shall be entitled to keep the pet and acquire new pets. A caveat exists, however, in H.R.S. Section 514A-82.6(a) which states that the bylaws must have initially allowed owners to keep such pets in the condominium unit, or there was an absence of any provision in the bylaws prohibiting the keeping of such pets. Further, H.R.S. Section 514A-82.6(a) allows the owner to replace the animal, upon its death, with another animal and continue to do so for as long as the owner continues to reside in the unit or another unit which is subject to the same bylaws.

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minimum board of directors to include information as to whether the amount of estimated replacement reserves to be collected for the fiscal year was calculated using a percent funded or cash flow plan. H.R.S. Section 514A-83.6(b) is amended to require condominium associations to assess apartment owners to fund either a minimum of 50% of the estimated replacement reserves, or 100% of the estimated replacement reserves when using a cash flow plan. Also, H.R.S. Section 514A-83.6(j) is amended to add a new definition for "cash flow plan" which is defined as "a minimum twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency."

Act 135 (HB 793 HD1 SD 2) Effective July 1, 1997 Regarding Two New Sections on Contingent Final Public Reports and Protection of Purchasers' Funds and on Other Amendments

Act 135 is lengthy, containing 21 sections amending H.R.S. Chapter 514A. The following summary is taken verbatim from the legislature's findings contained in Act 135 Section 1(b):

This Act proposes amendments to chapter 514A, H.R.S., to ease these hurdles to the development of condominium housing, while preserving the existing buyer protections contained in chapter 514A, H.R.S. This Act amends chapter 514A, H.R.S., to:

(1) Permit a developer's contingent final public report for a project before a developer has acquired the land, obtained financing commitments, and, in the case of a new development, executed construction contracts, and obtained building permits. As with a final public report, purchasers could be bound under their purchase contracts based on a contingent final public report. However, where the commission has issued an effective date for a developer's contingent final public report, there would not be any disbursement of purchasers' deposits from escrow unless and until the developer has satisfied those requirements within a maximum of nine months after issuance of the contingent final public report. If the developer has not satisfied those conditions and obtained a final public report within this period, then the devel-

oper and the purchasers would have the right to rescind their contracts and the purchasers would get their money back from escrow with interest and would be reimbursed by the developer for any escrow fees and financing commitment fees that they incurred. This change would allow developers to minimize some of the significant up-front costs and risks that presently increase the cost of condominium housing or prevent condominium development altogether. Because purchasers' deposits would be protected until the developer satisfies these requirements, this change would not affect the buyer protections that are already contained in chapter 514A, H.R.S.; and

(2) Allow developers to satisfy the owner-occupant requirements in part VI of chapter 514A, H.R.S., after the developers obtain from the commission an effective date for the first public report on a project, at which time the developer would begin marketing the project simultaneously to both prospective owner-occupants and the general public. Simplifying the marketing process under chapter 514A, H.R.S., as set forth in this Act would reduce marketing costs and allow early, more effective, test marketing of a project in order to determine market feasibility and fulfill lenders' presale requirements. It would also streamline and simplify what is, from both a buyer's and developer's perspective, a very complex and confusing process. Combining the owner-occupant and general public marketing phases in this way will not affect existing rights of qualified owner-occupant purchasers to buy up to fifty percent of the residential units in a project.

This Act also proposes certain amendments to Act 106, Session Laws of Hawaii 1996, to conform that Act with chapter 514A, H.R.S.

Act 150 (HB 1309 HD1 SD2 CD1) Effective June 16, 1997 Regarding a New Section on the Applicability of H.R.S. Chapter 514A to Condominiums Created Prior to May 29, 1963 and on Current Evidence of a Fidelity Bond

H.R.S. Chapter 514A is amended by adding a new section providing for the inapplicability of the chapter to condominium projects or associations of apartment owners created prior to May 29, 1963 pursuant to Act 180, SLH 1961, unless all owners and lien holders have expressly declared that H.R.S. Chapter 514A shall apply

to the property and govern the rights of all persons owning interests or liens on the property. Express declarations shall be made through the execution and recordation of a declaration in the form and content required to establish a condominium property regime pursuant to H.R.S. Chapter 514A. However, any condominium project or association created prior to May 29, 1963 pursuant to Act 180, SLH 1961, having seven or more units must register and comply with the requirements of H.R.S. Sections 514A-95.1 and 514A-132, except for the fidelity bond requirement. Also, Act 150 amends H.R.S. Section 514A-95(a) to require current evidence of a fidelity bond, which includes a certification statement from an insurance company registered with the DCCA's insurance division. Finally, the failure of condominium managing agents to report in writing to the Real Estate Commission any changes to the application, fidelity bond, or other registration documents may result in termination of registration and subject the managing agent, rather than the condominium project or association, to initial registration requirements.

Act 232 (HB 1896 HD1) Effective June 17, 1997 Regarding Deposit of Fees to the Compliance Resolution Fund

Act 232 amends H.R.S. Section 514A-44 to require that all fees collected under H.R.S. Chapter 514A be deposited to the compliance resolution fund, rather than the state general fund.

Act 350 (HB 143 HD2 SD1 CD1) Regarding Changes Made to H.R.S. Chapter 514A Effective July 1, 1998 Due to the Creation of a New Housing and Community Development Corporation of Hawaii

Effective next summer, H.R.S. Sections 514A-14.5 and 514A-108 are amended to substitute all references made to H.R.S. Chapter 201E (regarding the Housing Finance and Development Corporation) and Chapter 356 (regarding the Hawaii Housing Authority) with the corresponding chapter of the new law created and codified under Act 350. The purpose of Act 350 is to consolidate all state housing functions currently under the Hawaii Housing Authority, the Housing Finance and Development Corporation, and the Rental Housing Trust Fund, as well as state housing employees into a new Housing and Community Development Corporation. Effective next summer on July 1, 1998, H.R.S. Chapters 201E and 356 will be repealed.

SB 623 (SD 2) Regarding a Proposal to Deposit Fees Collected for Condominium Management Education into the State's General Fund Rather Than into the Special Condominium Management Education Fund (CMEF)

Fortunately, SB 623 (SD2) was substantially revised by the House Committee on Finance as SB 623 (SD2 HD1) to eliminate language which would have required the deposit of Condominium Management Education Funds (CMEF) into the State's *general* fund, rather than into the CMEF *special* fund, before it was signed into law by Governor Cayetano as Act 270.

Currently, pursuant to H.R.S. Sections 514A-131(a) and 133(a), the Real Estate Commission holds the *special* fund CMEF monies in trust to carry out "educational purposes" such as education and research in the field of condominium management, and the funding of expeditious and inexpensive procedures for resolving condominium association disputes. Due to "the State's difficult fiscal situation," the Senate Ways and Means Committee had initially proposed amendments to H.R.S. Sections 514A-131, 132 and 133 which would have deposited the \$4 per apartment CMEF fee collected during the biennial condominium association registration into the state *general* fund, and then allow the legislature to allocate *whatever monies it deemed appropriate* (usually *less* money) to the Real Estate Commission for educational purposes. Fortunately, the Real Estate Commission staff and others testified in opposition to the Senate Ways and Means Committee's proposed bill, with the result being that the House Committee on Finance eliminated language authorizing the appropriation of *special* funds into the *general* fund.

Should Hawaii's fiscal situation remain "difficult," it is foreseeable that the 1998 Legislature will resurrect a bill similar to SB 623 (SD2) to appropriate monies from *special* funds, such as the CMEF, for deposit into the *general* fund. If you desire the Real Estate Commission to maintain 100% of the CMEF money for condominium educational purposes, then condominium owners, associations and supporters are urged to inform their representatives of their opposition to such legislation, and to submit testimony strongly opposing proposed bills that authorize the legislature to appropriate *special* fund monies for deposit into to the *general* fund.

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hazard areas should obtain flood insurance because *associations* are not eligible for federal *disaster* assistance in the event of flood damage under sections 406, 411 or 422(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act (42 U.S.C. Sections 5172, 5178, 5189(1)). Federal *disaster* assistance is only available for public facilities and certain private nonprofit facilities.

Further, condominium *associations* do not qualify for individual and family grant (IFG) awards to repair, replace or rebuild primary owner-occupied residences under Section 411 of the Stafford Act (42 U.S.C. Section 5178). Associations cannot obtain IFG awards because they are not individuals or families, and the condominium common elements are not considered part of an owner-occupied residence pursuant to 44 C.F.R. Section 206.131 (d)(2)(i)(A). A condominium association may, however, qualify for *federal financial* assistance through a federal agency or federally regulated lender for the repair or reconstruction of flood damage to property located in a special flood hazard area if the association agrees to purchase and maintain flood insurance for the duration of the loan. Associations should note that the expense of purchasing flood insurance will be in addition to the loan repayment expense.

Owners of *individual condominium units* located in special flood hazard areas may qualify for IFG awards to repair, replace or rebuild primary owner-occupied residences. The flood insurance purchase requirement is applied prospectively, that is, even if the condominium property was uninsured at the time of damage, owners may qualify for federal financial assistance for the *first* incidence of disaster-related damage if the owners purchase flood insurance before receiving the assistance. Such IFG award recipients will be included in a Group Flood Insurance Policy beginning sixty days after the date of the disaster declaration pursuant to 44 C.F.R. Sections 61.17, 206.131(d)(1)(iii)(C)(2). States, however, may not make an IFG award for *subsequent* flood damage to a recipient who failed to maintain flood insurance on property that was the subject of a prior award for flood damage occurring after September 23, 1994 pursuant to 44 C.F.R. Section 206.131(d)(1)(iii)(D).

The decision of an *association* not to purchase flood insurance on the common elements will not affect the eligibility of *individual or family owners* to obtain assistance under Section 411 of the Stafford Act (42 U.S.C. Section 5178). However, in the event of serious flood damage, the lack of association flood insurance may cause unit owners to be displaced if the association cannot afford to repair the common elements. Further, states may not make IFG awards for acquisition or

construction purposes in a designated special flood hazard area where flood insurance is available under the National Flood Insurance Program (NFIP) unless the individual or family agrees to purchase and maintain adequate flood insurance for the duration of their residency in the condominium unit pursuant to 44 C.F.R. Section 206.131(d)(1)(iii)(C)(1).

Both condominium associations and owners should be aware of the following basic federal requirements regarding flood insurance: First, 42 U.S.C. Section 4012a(a) prohibits "financial assistance for acquisition or construction purposes" (as defined in 42 U.S.C. Section 4003(a)(4)) directly from a "federal agency" (as defined in 42 U.S.C. Section 4003(2)) with respect to property in a special flood hazard area (*see* 44 C.F.R. Section 59.1) where flood insurance is available under the NFIP unless the property is protected by flood insurance. Second, "federal agency lenders" (as defined in 42 U.S.C. Section 4003(a)(7)) are bound by a similar flood insurance purchase requirement on loans secured by improved real estate in a special flood hazard area where flood insurance is available under the NFIP pursuant to 42 U.S.C. Section 4012a(a). Third, under 42 U.S.C. Section 4012a(b)(1), the flood insurance purchase requirement is applied to mortgage loans made by federally "regulated lending institutions" (as defined in 42 U.S.C. Section 4003(10)). Fourth, under 42 U.S.C. Section 4012a(b)(3), the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are required to ensure that loans which they purchase, if secured by property in a special flood hazard area where flood insurance is available under the NFIP, are protected by flood insurance.

Finally, condominium associations and owners should know that failure to obtain and maintain flood insurance on property located in a special flood hazard area where flood insurance is available will impair the marketability of a mortgage secured by that property under 42 U.S.C. Section 4012a(b)(3). Pursuant to 42 U.S.C. Section 4012a(a), (b)(1), (2), the same principles apply to the increase, extension or renewal of secured loans. Further, if the loan is made, increased, extended or renewed after September 23, 1995, lenders have authority to purchase any required flood insurance which the borrower fails to purchase or maintain and to charge the premiums and fees to the borrower pursuant to 42 U.S.C. Section 4012a(e).

For online information regarding FEMA, readers may visit the FEMA web site at www.fema.gov. The page on the FEMA web site that deals specifically with the National Flood Insurance Program is located at: www.fema.gov/fema/finfip.htm.

Joint Specialists Office for the Day Comes to Neighbor Isles

The Real Estate Commission's condominium and real estate specialists set up "offices for a day" on the neighbor islands throughout Summer and Fall 1997 to discuss condominium and real estate licensing concerns with interested parties. On Friday, July 25, 1997, condominium specialist Camille Chun Hoon and real estate specialist Russell Wong travelled to **Lihue, Kauai** to meet with the public in the State Office Building conference room. Condominium specialist Gina Watumull and real estate specialist Lee Ann Teshima set up offices for a day at the RICO office in **Hilo** on Thursday, August 21, 1997, and at the RICO office in **Kona** on Friday, August 22, 1997. On **Friday, November 7, 1997**, senior condominium specialist Cynthia Yee and senior real estate specialist Ed Ikuma will be **available by appointment** at the RICO office in **Wailuku, Maui**. Interested persons who will be on Maui on November 7, 1997 are encouraged to schedule an appointment with the appropriate specialist for this upcoming Joint Specialists Office for the Day.

Oahu readers may contact **Cynthia Yee (condo concerns) at 586-2646** and/or **Ed Ikuma (real estate licensing concerns) at 586-2645** to schedule an appointment on Maui. Neighbor island readers may dial toll free as follows:

Maui 984-2400 ext 6-2646 or 6-2645
Kauai 274-3141 ext 6-2646 or 6-2645
Hawaii 974-4000 ext 6-2646 or 6-2645
Molokai
& Lanai 1-800-468- 4644 ext 6-2646 or 6-2645

Dates, times and locations are subject to change. Parties obtaining appointments are advised to contact the respective specialist just prior to November 7 to confirm the appointment.

The "office for a day" program was created to enable **condominium specialists** to meet with interested neighbor island parties to discuss concerns about boards, associations, meetings, condominium managing agents, condominium association registration, fidelity bonding, condominium property regimes, sales to owner-occupants, public reports, project registration, new legislation, reserves, and other condominium-related topics.

Topics of discussion with the **real estate specialists** include licensing laws and rules, licensing applications, broker experience certificate applications, examination administration, mandatory continuing education, new legislation, Real Estate Commission procedures, educational programs, and other real estate licensing-related topics.

Q&A from pg. 2

Q. Can the Real Estate Commission step in to resolve disputes between owners and the association, owners and the board, owners and the managing agent, or disputes between owners?

A. No, condominium law is based upon principles of self-governance, owner-enforcement, voluntary mediation, mandatory arbitration, and limited government intervention which is restricted to violations specified in H.R.S. Sections 514A-46, 47 and 48. Pursuant to H.R.S. Sections 26-9(h) and (m), the authority to receive and investigate complaints or initiate legal action is delegated to the Regulated Industries Complaints Office (RICO). Readers may contact RICO to inquire whether they have jurisdiction to investigate and prosecute specific disputes as follows:

Oahu 587-3222 Hilo 933-4522
Kauai 274-3200 Kona 329-6684
Maui 243-5358

Further, if a dispute relates to the interpretation, application or enforcement of H.R.S. Chapter 514A or the association's declaration, bylaws or house rules, then H.R.S. Section 514A-121 **requires** the dispute to be submitted to **arbitration** at the request of any party. Readers may consult the yellow pages of the telephone book under "Arbitration Services" to contact local arbitrators. Further, **mediation** services are also available to help resolve disputes. However, mediation is not required by law unless your condominium project governing documents contain a mandatory mediation provision. Mediation services are available through: Neighborhood Justice Center; 200 N. Vineyard Blvd., Suite 320; Honolulu, HI 96817; Phone: 521-6767; and Mediation Services of Maui, Inc.; 95 Mahalani Street; Wailuku, HI 96793; Phone (808) 244-5744.

Amended Real Estate Commission Meeting Schedule for 1997

Condominium Review Committee (1:30 p.m.)

Monday, September 15 – Kapuaiwa Room
 Wednesday, October 8 – Aston Wailea Resort, Wailea, Maui
 Monday, November 10 – Kapuaiwa Room
 Wednesday, December 10 – Kapuaiwa Room

Real Estate Commission (9 a.m.)

Friday, September 26 – Kapuaiwa Room
 Friday, October 24 – Kapuaiwa Room
 Wednesday, November 26 – Kapuaiwa Room
 Thursday, December 11 – Kapuaiwa Room

Kapuaiwa and Kuhina Nui Rooms

HRH Princess Victoria Kamamalu Bldg., 1010 Richards Street, 2nd Floor, Honolulu, HI

Subject to change. Please reconfirm dates, times and location with commission staff. Phone 586-2643.

Education Calendar

This listing reports the availability of some condominium governance-related events. The Hawaii Real Estate Commission and the Hawaii Real Estate Research and Education Center **express no opinion** about the quality or content of any event which they do not sponsor; neither should the listing be construed as an endorsement or sponsorship of any event by the Hawaii Real Estate Commission or the Hawaii Real Estate Research and Education Center, unless expressly indicated. Interested parties are advised to conduct their own investigation and formulate their own opinion about these matters. Participants are advised that courses are subject to change; please check directly with the provider about the specifics of a particular event.

Date	Time	Course Title	Location	Provider
9/3/97	8:00-12:00	Maintenance Seminar - Waterproofing, Security, Roofing and In-house maintenance \$35.00 members; \$45.00 nonmembers	Regency Tower 2525 Date Street	ARM
9/11/97	11:30-1:30	Education Luncheon - \$20 per person "Hawaii's Place in the World of High Technology" - Barbara Stanton	Hale Koa Hotel	HCAAO
9/18/97	11:30-1:30	Return of the Termite Seminar	Hale Koa Hotel	CAI
10/16/97	TBD	Luncheon Program	Hale Koa Hotel	CAI
11/22/97	TBD	"25 year face lift" program	JCC	CAI

For full information on the above-listed courses, please call the provider

	Provider	Phone	Address
Alakahi	The Alakahi Foundation	522-5990 (Oahu)	1142 Auahi St. Suite 1806, Honolulu, HI 96814
CAI –	Community Associations Institute Hawaii Chapter	488-1133 (Oahu)	P.O. Box 976, Honolulu, HI 96808
HAC	Oahu ARM Committee	523-6096 (Oahu)	1571 Piikoi St. #506, Honolulu, HI 96822
HCAAO –	Hawaii Council of Associations of Apartment Owners	533-2528 (Oahu)	677 Ala Moana Blvd., Suite 701, Honolulu, HI 96813
IREM –	Institute of Real Estate Management Hawaii Chapter No. 34	737-4000 (Oahu)	1136 12th Ave., Suite 220, Honolulu, HI 96816
CCM –	Condominium Council of Maui	879-8847 (Maui)	P.O. Box 647, Kihei, HI 96753
UH-SPP–	Special and Professional Programs College of Continuing Education, University of Hawaii	956-8244 (Oahu)	2530 Dole St., Honolulu, HI 96822

Visit the Real Estate Branch and Real Estate Commission's homepage at: <http://kumu.icsd.hawaii.gov/hirec>

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