



**How to Avoid the Top  
Charitable Estate Planning Mistakes**

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**“My Estate Plan is  
Fine the Way it is”**




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**My Estate Plan is Fine the Way it is**

- Carol – Midwestern nurse, never married, no children, retired
- Had a Will – left her house and contents to her favorite charity
- \$150,000 IRA with the primary beneficiary designation to her niece and nephew, 50/50




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### My Estate Plan is Fine the Way it is

- Total estate value - \$300,000
- Her heirs didn't need another home
- Heirs wouldn't have to fuss over selling her home

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### My Estate Plan is Fine the Way it is

- Problem: IRA generates ordinary income to heirs at their own marginal bracket
- Assume they are in a 28% bracket – means \$42,000 in taxes netting them \$108,000
- Charity gets house worth \$150,000 with \$0 taxes

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### My Estate Plan is Fine the Way it is

#### Carol's Existing Estate Plan

| Beneficiary                 | Niece and Nephew      | Charity                      |
|-----------------------------|-----------------------|------------------------------|
| Gross amount of inheritance | \$150,000 IRA         | \$150,000 house and contents |
| Tax                         | \$42,000 (IRD at 28%) | \$0                          |
| Net to beneficiary          | \$108,000             | \$150,000                    |

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## My Estate Plan is Fine the Way it is

### Carol's REVISED Estate Plan

| Beneficiary                 | Niece and Nephew  | Charity                                |
|-----------------------------|---|--|
| Gross amount of inheritance | \$150,000 house and contents  | \$150,000 IRA                          |
| Tax                         | \$0 assuming home gets a stepped up cost basis to date of death value | \$0 due to charity's tax exempt status |
| Net to beneficiary          | \$150,000   | \$150,000                              |

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"I'm Giving 10 Percent to Charity, Aren't I?"

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## I'm Giving 10% to Charity, Aren't I?

- Maggie – retired widow
- Was sure her estate plan was in complete order
- Had a living trust – left her estate to two adult sons and several charities

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### I'm Giving 10% to Charity, Aren't I?

- Trust had 10% "of my trust" off the top payable to 7 charities and the balance split 50/50 with two sons
- Also had a life insurance policy that named two sons as beneficiary - 50% to each son

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### I'm Giving 10% to Charity, Aren't I?

- Problem – They didn't realize the life insurance would pass OUTSIDE of her trust and not be included in the 10%
- Only 5.5% of her total estate would have gone to her favorite charities, not 10% because of how the trust was drafted

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### I'm Giving 10% to Charity, Aren't I?

#### Maggie's Existing Estate Plan

| Assets                         | Beneficiary                           | Fair Market Value  | Amount Going to Charity                        |
|--------------------------------|---------------------------------------|--------------------|--|
| Home                           | Through the trust                     | \$150,000          | 10% or \$15,000                                |
| Life insurance                 | Two sons equally via beneficiary form | \$450,000          | \$0  |
| Stocks and mutual funds        | Through the trust                     | \$300,000          | 10% or \$30,000                                |
| Misc. assets                   | Through the trust                     | \$100,000          | 10% or \$10,000                                |
| <b>Total estate</b>            |                                       | <b>\$1,000,000</b> |  |
| <b>Total amount to charity</b> |                                       |                    | <b>\$55,000 (not \$100,000 as she desired)</b> |

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## I'm Giving 10% to Charity, Aren't I?

### Maggie's REVISED Estate Plan

| Assets                         | Beneficiary                           | Fair Market Value  | Amount Going to Charity |
|--------------------------------|---------------------------------------|--------------------|-------------------------|
| Home                           | Through the will/trust                | \$150,000          | 10% or \$15,000         |
| Life insurance                 | Two sons equally via beneficiary form | \$450,000          | 10% or \$45,000         |
| Stocks and mutual funds        | Through the will/trust                | \$300,000          | 10% or \$30,000         |
| Misc. assets                   | Through the will/trust                | \$100,000          | 10% or \$10,000         |
| <b>Total estate</b>            |                                       | <b>\$1,000,000</b> |                         |
| <b>Total amount to charity</b> |                                       |                    | <b>\$100,000</b>        |

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“She Loves So Many Charities – How do I Draft Her Documents?”

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### She Loves So Many Charities – How do I Draft the Documents?

- Southern woman – very generous, single, no children, inherited farm from parents
- 2/3 of her estate to 13 charities
- 1/3 of her estate to nieces and nephews
- Estate valued at \$1,500,000

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### She Loves So Many Charities – How do I Draft the Documents?

- Attorney drafted the will with all the nieces and nephews and charities receiving a specific percentage
- IRAs were payable to “my estate”

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### She Loves So Many Charities – How do I Draft the Documents?

#### Sandy's Existing Estate Plan

| Asset                               | Beneficiary        | Fair Market Value  |
|-------------------------------------|--------------------|--------------------|
| IRAs                                | “My estate”        | \$300,000          |
| All other assets including farmland | Through will/trust | \$1,200,000        |
| <b>Total estate</b>                 |                    | <b>\$1,500,000</b> |

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### She Loves So Many Charities – How do I Draft the Documents?

#### Identification of the Problem

|  |   |
|--|---|
| Possible taxable income to the estate                  | \$300,000 due to the IRA being payable to “My Estate” |
| Possible offsetting income tax deduction to the estate | \$0 or 2/3 of \$300,000?<br>Unsettled area of law     |

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## She Loves So Many Charities – How do I Draft the Documents?

### Sandy's REVISED Estate Plan

| Asset                               | Beneficiary  | Fair Market Value  |
|-------------------------------------|--|--------------------|
| IRA                                 | Her fund at the local community foundation   | \$300,000          |
| All other assets including farmland | Through her Will/trust....some of which flow to the community foundation fund and the rest to her nieces and nephews | \$1,200,000        |
| <b>Total estate</b>                 |  | <b>\$1,500,000</b> |

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## TODs and PODs Can Transfer Problems in Addition to Assets

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### TODs/PODs Can Transfer Problems In Addition to Assets

- TODs and PODs are popular strategies to avoid probate
- Can be problematic
- Can upset an otherwise well crafted estate plan
- For example, what if the POD beneficiary predeceases the testator?

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### TODs/PODs Can Transfer Problems In Addition to Assets

- Bill wants to leave his estate equally to two sons and 2 charities
- His will divides everything 25% to each beneficiary
- However, his bank accounts are POD 50/50 to each son

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### TODs/PODs Can Transfer Problems In Addition to Assets

#### Bill's Existing Estate Plan

| Assets                                  | Beneficiary              | Fair Market Value | Amount Going to 2 Charities                   | Amount Going to 2 Sons                        |
|---|--------------------------|-------------------|---|---|
| Home                                    | Through the will/trust   | \$200,000         | 50% or \$100,000                              | 50% or \$100,000                              |
| Bank accounts                           | (Payable On death (POD)) | \$500,000         | \$0   | \$500,000                                     |
| Misc. assets                            | Through the will/trust   | \$100,000         | 50% or \$50,000                               | 50% or \$50,000                               |
| <b>Total estate</b>                     |                          | <b>\$800,000</b>  |   |   |
| <b>Total going to the beneficiaries</b> |                          |                   | <b>\$150,000 (should have been \$400,000)</b> | <b>\$650,000 (should have been \$400,000)</b> |

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### TODs/PODs Can Transfer Problems In Addition to Assets

#### Bill's REVISED Estate Plan

| Assets                                  | Beneficiary            | Fair Market Value | Amount Going to 2 Charities | Amount Going to 2 Sons |
|---|------------------------|-------------------|-----------------------------|------------------------|
| Home                                    | Through the will/trust | \$200,000         | 50% or \$100,000            | 50% or \$100,000       |
| Bank accounts                           | Through the will/trust | \$500,000         | 50% or \$250,000            | 50% or \$250,000       |
| Misc. assets                            | Through the will/trust | \$100,000         | 50% or \$50,000             | 50% or \$50,000        |
| <b>Total estate</b>                     |                        | <b>\$800,000</b>  |                             |                        |
| <b>Total going to the beneficiaries</b> |                        |                   | <b>\$400,000</b>            | <b>\$400,000</b>       |

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## Which Comes First – the Chicken or the Egg?

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### Which Comes First – The Chicken or the Egg?

- Very generous single woman
- No children
- \$7 million estate
- She wanted it all to go to multiple charities
- Drafted will in 2013

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### Which Comes First – The Chicken or the Egg?

- In 2014 she went to the community foundation to establish a testamentary fund
- Problem: Her will from 2013 didn't refer to the gift agreement nor did it have her estate flow into the gift agreement
- Possibility that her wishes would not be fulfilled

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### Which Comes First – The Chicken or the Egg?

- Solution: amended will to specifically refer to the gift agreement

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### Which Comes First – The Chicken or the Egg?

In fact, if the attorney knows the donor is going to be completing a fund with the charity AFTER the will or trust is executed, the following language can be used:

- “ \_\_\_\_\_% to the University of ABC for \_\_\_\_\_ purposes, provided that if Mr. Testator prior to death has established a special fund with the University of ABC, such amount shall be added to such special fund.”

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### When Business Transactions Actually Destroy Your Client's Legacy

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### When Business Transactions Destroy Your Client's Legacy

- Pilot owned his own aircraft
- He was married to his second wife
- Updated his estate plan to leave his airplane to his flight instructor school at his death
- 5 years later he formed an LLC with legal advice from a different attorney and transferred the ownership of the airplane into the LLC

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### When Business Transactions Destroy Your Client's Legacy

- When he died, his will bequeathed the airplane (not the LLC) to the flight school
- Legally he didn't own the airplane any longer to give it to the school
- Instead he owned shares of an LLC
- The shares went to the second wife who was the beneficiary of the residuary estate

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### When to Update an Estate Plan

- Retirement
- Birth of new family members
- Death of a family member
- Marriage
- Divorce
- Move to a different state
- Change in tax laws (either federal or state) such as estate tax, inheritance tax, capital gains tax, etc.
- Significant change in the size/value of estate assets
- Change in or loss of group life insurance through the employer
- Business acquisitions/significant changes in business ownership
- Otherwise, every 3-5 years

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## "I Already Have a Charitable Trust Set Up and it is Funded with my IRA When I Die"

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### I Already Have A Charitable Trust Set Up Funded By My IRA When I Die

- Client sets up a testamentary charitable trust to be funded with the proceeds from an IRA upon client's death
- Legal documents are in excellent order
- Beneficiary designations are frequently incorrect

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### I Already Have A Charitable Trust Set Up Funded By My IRA When I Die

- A client had a \$1,000,000 IRA with his
  - spouse as the primary beneficiary and
  - his two sons as the contingent beneficiary
- **Should have been:**
  - spouse as the primary beneficiary
  - trustee of charitable trust as the contingent beneficiary

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## I Already Have A Charitable Trust Set Up Funded By My IRA When I Die

- As set up, \$0 would have gone into the trust
- There is no way the charitable trust would have been funded with the IRA even with a disclaimer
- Yet client spent extra legal fees to set up a charitable trust
- Years earlier, instructions were given to the insurance professional to update the IRA beneficiary but somehow in the process the beneficiary was incorrectly done
- Discovered some 7 years later when the client amended the charities in the trust and looked at his whole estate plan

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## I Already Have A Charitable Trust Set Up Funded By My IRA When I Die

Another case:

- Single male, no heirs; part of his estate to nieces and nephews and part to several charities
- \$1M IRA was payable to "my estate" not to the stand alone charitable trust
- Again, there is no way the charitable trust would have been funded with the IRA even with a disclaimer
- **Should have been:** Trustee of charitable trust as the primary beneficiary

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## "I Have Charities in my Will"

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## "I Have Charities in my Will"

Often clients are mistaken as to when the charity will take under a final taker clause in a will or trust  
It is helpful if the clients understand this clause better as they frequently tell a charity they are included in their estate plans  
This may be true -- but often the client misunderstands how this works because the charitable gift likely will not happen at all

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## "I Have Charities in my Will"

### Final Taker Clause in Will or Trust:

If at any time before final distribution there shall not be in existence anyone who is, or who might become, entitled to receive benefits under the foregoing provisions of this Last Will And Testament, any portion remaining should be distributed as follows:  
100% to XYZ Charity currently located in Des Moines, Iowa 50309.

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"I Used Wite Out to  
Change My Will –  
My Bad!"



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### "I Used Wite Out to Change my Will – My Bad!"

- Seasoned business owner has will
- He is married with two daughters – both are minors
- Wanted to change the guardian for his daughters
- He used a bottle of Wite Out and then handwrote the name of new guardian.
- He signed his will next to the change.



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### "I Used Wite Out to Change my Will – My Bad!"

- In his mind, signing the changed portion of the will was all he needed to do.
- Look to state law
- Is that part of the will valid?
- Or, could it be a valid codicil?
  - Signed by testator? Does the signature need to be at the end of will?
  - Witnessed by two/three people?



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### "I Used Wite Out to Change my Will – My Bad!"

- Clients get confused:
  - Separate writing can be changed with handwritten edits
  - But a will or trust cannot
- We can provide a great service by telling clients when they should come back for a review of their estate plan
- And remind them that handwritten changes aren't valid



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## On-line and Do-It-Yourself Wills

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### On-line and Do-It-Yourself Wills

- Do-It-Yourself Wills and Trusts can mislead clients into a false sense of security in their self-created estate plans
- Cheap price is attractive
- Many people have lawyer-phobia

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### On-line and Do-It-Yourself Wills

“He who represents himself has  
a fool for a client.”



Thomas Jefferson

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### On-line and Do-It-Yourself Wills

- Judge Klotz comment
- I have reviewed only 1 that was accurate

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### Client's Written Letter Does Not Equal a Valid Will

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### Client's Written Letter Does Not Equal a Valid Will

- Executive director of a charity
- Married; 3 kids
- Wanted to leave a \$500,000 charitable gift to his nonprofit at his death

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### Client's Written Letter Does Not Equal a Valid Will

- He wrote a letter saying he wanted to leave a \$500,000 gift to his nonprofit
- He signed the letter and dated it
- Left the letter next to his Will
- Thought it was valid and enforceable

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### Client's Written Letter Does Not Equal a Valid Will

- Is the letter a valid will?
- Is it a valid codicil?
- State law applies

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### Client's Written Letter Does Not Equal a Valid Will

- Solution has a double benefit
- Instead of including the charitable gift in his will, he had it payable from his \$1M IRA via a beneficiary designation directly to a fund he established at the charity

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## Client's Written Letter Does Not Equal A Valid Will

### Gary's Existing Estate Plan

| Beneficiary   | Spouse      | Charity                            |
|---|-------------|------------------------------------|
| Gross amount of inheritance   | \$5,000,000 | \$0 due to ineffective estate gift |
| IRD tax on \$1M IRA assuming a 28% federal marginal tax bracket-assuming no spousal Rollover was done | \$ 280,000  | \$0                                |
| Net to beneficiary  | \$4,720,000 | \$0                                |

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## Client's Written Letter Does Not Equal a Valid Will

- By having 50% of the IRA flow directly to charity, the total income tax due for the IRA is cut in ½
- From \$280,000 to \$140,000
- Spouse can do a Rollover IRA and defer her tax

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## Client's Written Letter Does Not Equal A Valid Will

### Gary's REVISED Estate Plan

| Beneficiary   | Spouse                                      | Charity                                |
|---|---|--|
| Gross amount of inheritance   | \$4,000,000 of other assets + \$500,000 IRA | \$500,000 from IRA                     |
| IRD tax on \$1MIRA assuming a 28% federal marginal tax bracket assuming no spousal rollover | \$140,000                                   | \$0 due to charity's tax exempt status |
| Net to beneficiary  | \$4,360,000                                 | \$500,000                              |

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Farrah  
Fawcett

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### Farrah Fawcett Estate

- Recent headlines
- Farrah Fawcett estate
- Two paintings by Andy Warhol
- Her estate documents left "all my artwork" to her alma mater

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### Farrah Fawcett Estate

- Alma mater received one Warhol painting from Farrah's home
- It was not aware of another painting
- Later someone told the alma mater a second Warhol painting existed and Ryan O'Neal had it

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### Farrah Fawcett Estate

- Ryan says he doesn't have it
- Later Ryan - ABC interview at Ryan's home – painting is shown in clip
- Alma mater sues, Ryan admits he has it but a gift to him years ago



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### Farrah Fawcett Estate

- Ryan's new girlfriend didn't like it hanging at his home so Farrah was storing it for him
- No evidence of title
- Who insured it?
- Final court
- How to draft it differently?

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## Books for Advisors



*Tax Economics of Charitable Giving*,  
2014/2015 Edition, published by  
Warren Gorham and Lamont of RIA

For more information call:  
800-950-1216

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## Books for Advisors



*The Tools & Techniques of  
Charitable Planning*, 3rd  
Edition, published by National  
Underwriter Company

For more information, contact:  
800-543-0874  
[www.nuco.com](http://www.nuco.com)

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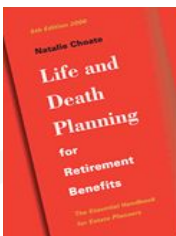
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## Books for Advisors



*Life and Death Planning for  
Retirement Benefits*, 7th Edition,  
by Natalie Choate, published by  
Ataxplan Publications

For more information, contact:  
800-247-6553  
[www.ataxplan.com](http://www.ataxplan.com)

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## Related Web Sites

- [www.pgdc.com](http://www.pgdc.com) - Planned Giving Design Center: free site with excellent technical content
- [www.leimbergservices.com](http://www.leimbergservices.com) - Steve Leimberg, resource for professional advisors: more than just gift planning, subscription required, daily e-mail available
- [www.charitableplanning.com](http://www.charitableplanning.com) - Emanuel Kallina, resource for professional advisors and gift planners: subscription required, daily e-mail available – **20% discount to PPP members!**

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## Charity Research Websites

- [www.guidestar.org](http://www.guidestar.org)
- [www.charitynavigator.org](http://www.charitynavigator.org)

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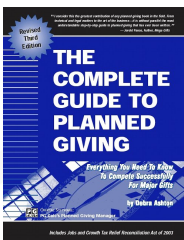
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## Book for Charity Staff



*The Complete Guide to Planned Giving, 3rd Edition, by Debra Ashton, published by Ashton & Associates*

For more information, call:  
617-472-9316

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**Questions?**

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