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HOW TO DISTRIBUTE YOUR ASSETS FAIRLY, BUT NOT EQUALLY

By Katya Sverdlov, Esq

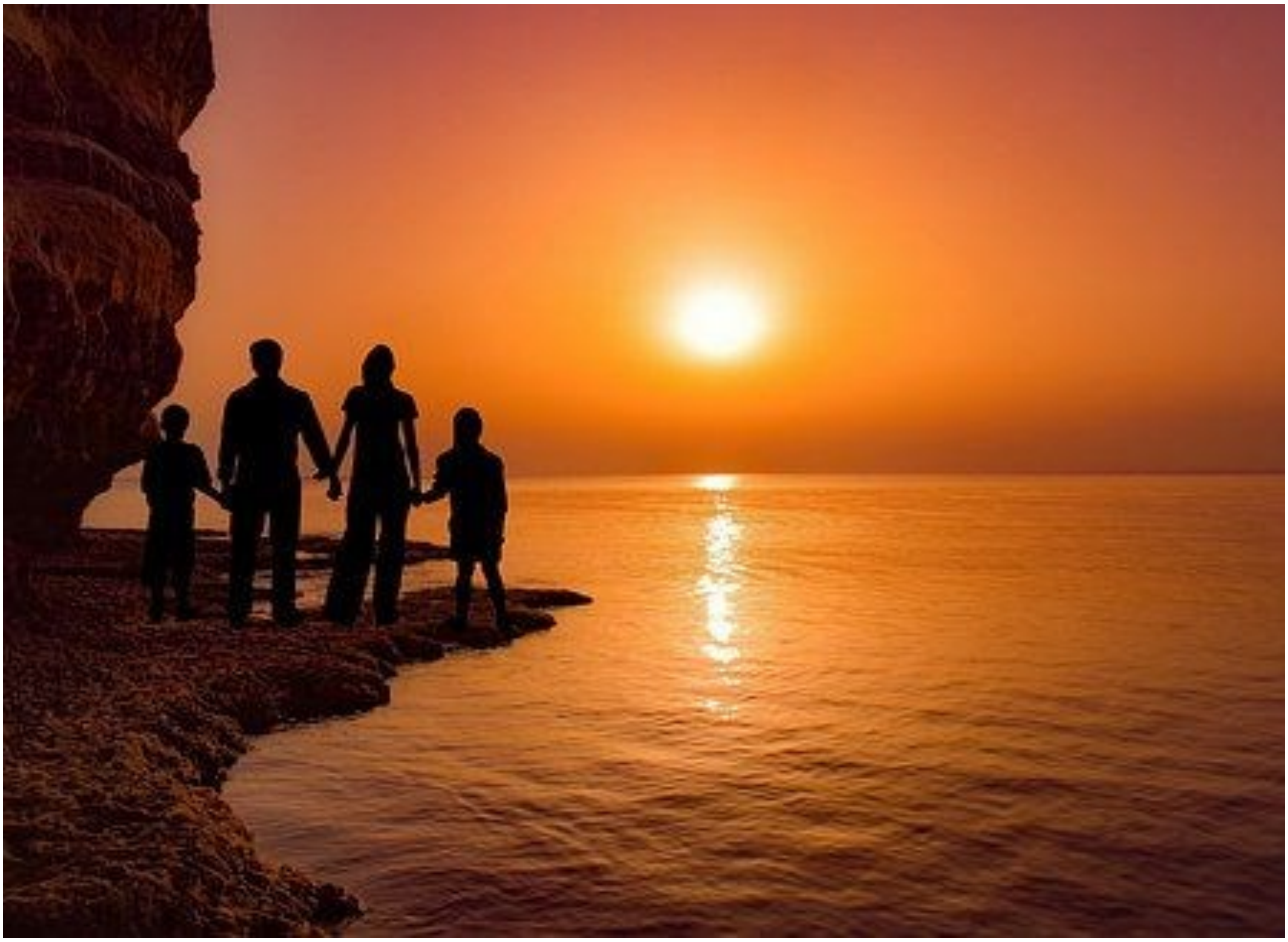
How To Distribute Your Assets Fairly, But Not Equally

Every family is different, and there is no mathematical equation that guides your relationships. Relationships are built on investments of time, attention, affection, and navigating life's inevitable peaks and valleys.

When creating an estate plan to pass on wealth to your beneficiaries, a formula based approach is often used. The total value of the estate is divided by the number of children, and that creates the basis for the estate plan.

While that approach may work for some f families, it is not the right solution for others.

Shifting the approach to the transfer of wealth requires changes to traditional thinking. The point in crafting an estate plan that truly fits the needs of your unique situation is to shift the conversation away from wealth. Instead, the conversation should focus on how you can benefit those you love with your wealth. The process requires a bit more time and work, but the rewards are worth the extra effort.



Initial Considerations When Creating an Estate Plan

Questions to ask yourself when deciding how to create a custom estate plan for asset distribution include:

- Would equal distributions be fair for your family?
- Should you bequeath your assets per family or per person?
- How will you handle emotionally charged assets (i.e. family house? Jewelry? Family business? Photos?)
- Are your children equally responsible? Do any of them have an alcohol / drug / gambling / stupidity problem?
- Do each of your children and any other beneficiaries get along with each other?

The most important question you should ask yourself is, "how can my wealth increase the well-being of my beneficiaries?" To answer this question, you should have an honest in-depth conversation with each one.

Equal Distributions when Children already received an Unequal Amount of Money?

Equal distributions fail to take into consideration the specific needs and desires of the beneficiaries. There are numerous times when an equal distribution is not in the best interest of all involved parties. You may have one child that you paid their way through medical school, while another went to work right after high school. It may feel unfair to give those two children an equal distribution given the enormous sum you paid toward the education of one.

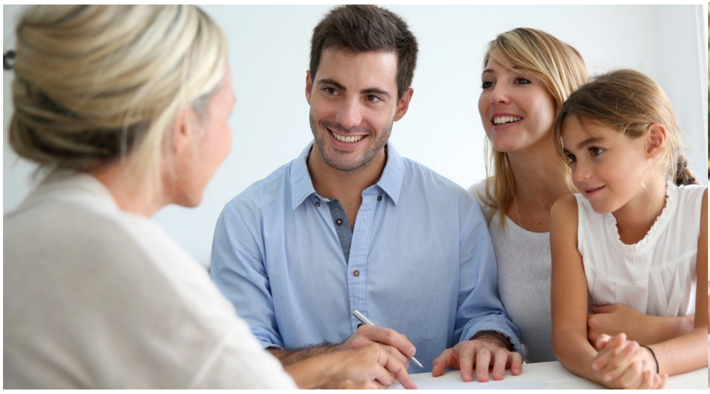
Families are never one-size-fits-all, and estate planning with an equal distribution of assets based on a simple formula does not allow you to create an estate plan that best benefits each person.

Distributing Assets Per Person or Per Family?

Your children may be grown and have families of their own. The size of your estate, the size of your family and the size of your children's family may play a significant role in determining if you want to distribute your estate per person or per family.

One child may remain single forever and be financially independent. Another may have 5 children of their own and struggle to pay for their education. Should both children receive an equal amount from you?

Some situations where these decisions are crucial and require deep thinking include when there are real estate assets that you hope to keep in the family. If you have a family home, land, or a vacation home, do you leave it to one person or a family? Would it be fair to them to force them to share this home together?



Emotionally Charged Assets Should NOT be left equally!

Perhaps your son spent every summer fishing with his grandfather at a fishing cabin. The other children had no interest in fishing and rarely visited the cabin. If you decide to use an equitable formula of taking the entire estate and splitting it equitably, the cabin might have to be sold despite your son's emotional attachment to the place.

The same may be true of assets that belonged to a parent that has passed away. Whether it is an expensive piece of jewelry or Mom's favorite teapot, one or more of your children may feel a strong sentimental attachment to various assets. Emotionally charged assets are one of the primary reasons for fighting amongst beneficiaries.

A family conversation about how such assets will be distributed can prevent resentment, hurt feelings, and anger. Give each beneficiary a chance to express their wishes and work together to develop a fair agreement for how the assets will be distributed.

Irresponsible Beneficiaries Should Receive Their Inheritance in a Different Way

It is unlikely that each of your children is equally responsible. Each person is unique, with their own strengths and weaknesses. Leaving valuable family heirlooms to a beneficiary that is unlikely to care for the item might be equitable, but it is hardly fair to the entire family. Similarly, leaving an equal amount of money to a beneficiary who is likely to gamble it all away within a month seems like a waste of hard-earned money!

You have numerous options in estate planning. Creating a trust with specifications about the use and distribution of assets can prevent conflict over each beneficiary's perceived responsibility. Time also changes people, and the twenty-year-old child that seems to be the epitome of irresponsibility may be the most responsible five years down the road.

Do the Beneficiaries Get Along With Each Other? Don't Make Them Fight!

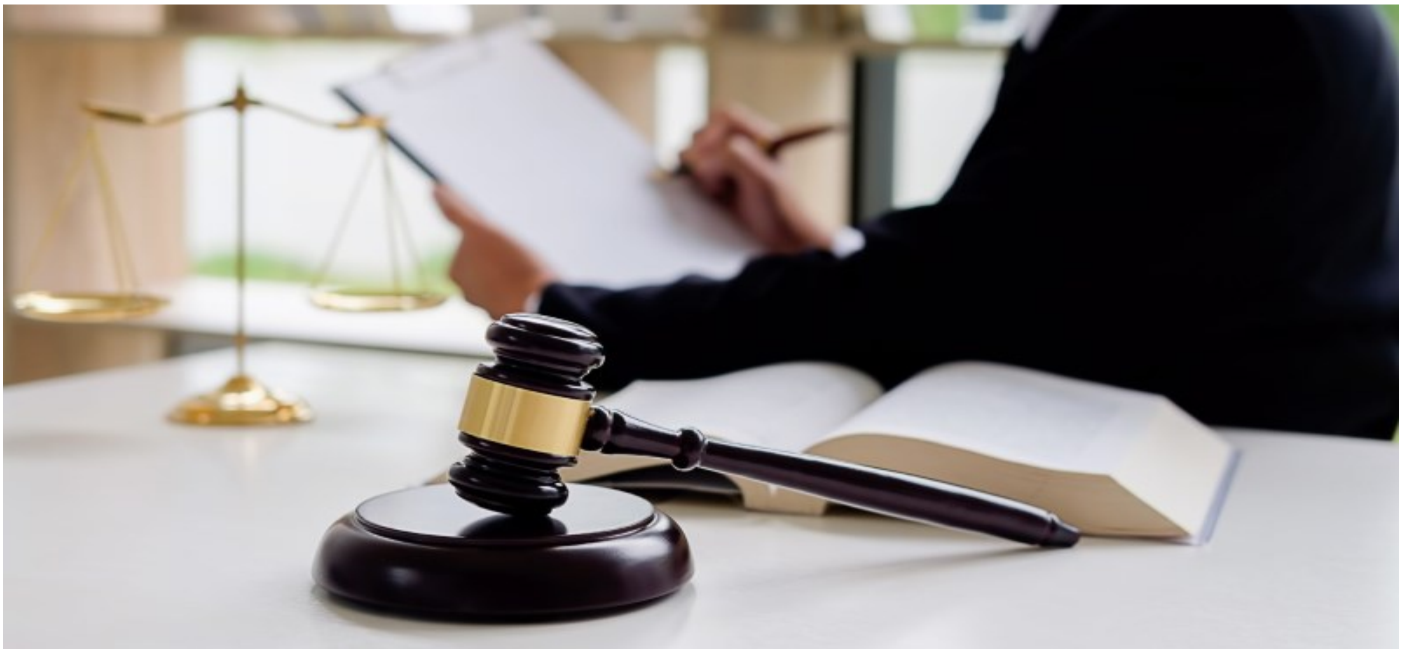
Everyone has heard or witnessed the horror stories of how probate can tear a family apart. You want to protect wealth to be a gift to your beneficiaries instead of a burden. What steps can you take to ensure that the wealth you worked hard to acquire isn't the thing that destroys your family?

Sometimes parents simply say: "let them deal with it afterwards". But this type of attitude may cause all the heirs to resent you later, for forcing them to deal with a very uncomfortable situation. While these thoughts are unpleasant, you may want to consider dividing up the inheritance in a manner that minimizes the interaction between the parties.

Remember, if you are leaving assets to distant relatives (cousins, nephews, etc.)– they may not even be familiar with each other! Do you really want to force them in a position to sell a house together when they are meeting for the first time?

It is a problematic fact that some beneficiaries have a misplaced sense of entitlement. It is essential that you remember it is your wealth, and you can do with it as you wish. The benefit of a trust is that the trustee has the final say, within the bounds of the trust, to distribute or not distribute funds at their discretion.

An airtight trust can help reduce the friction between siblings as they are all bound by the same terms of the trust. The key to successfully creating a trust lies in how well-crafted the trust is. Your trust should leave no room for confusion or disagreement.



Your Action Plan

1. Think About the Above and Consider Your Circumstances

Each family is unique. Each asset plan, each Will and each Trust is unique. Think about your family circumstances, your assets, what you want to accomplish and how you want to be remembered.

2. Talk to Your Beneficiaries

Instead of dividing your estate into equal shares, focus on initiatives that will produce specific benefits for each beneficiary. An excellent place to start is in asking each of your children / heirs how getting new assets might change their lives. One child might want to further their education, while another may want to start a business. Understanding your children's needs and desires can help you decide the best way to distribute your wealth fairly.

The conversations with your children will help you determine how to craft a custom estate plan to benefit each of them and provide a tool to build a stronger relationship as you learn more about their dreams and goals.

You should try to avoid the temptation to use your estate planning as a tool to steer your children in a specific direction, but you also do not have to fund the desires and whims you feel are ill-fated. Instead, work with each beneficiary to establish a goal to which you both agree.

The conversation, or series of conversations, with your beneficiaries, is also the perfect time to create realistic expectations. Family dynamics are complex, and your children may have an unrealistic expectation of your total wealth. The initial conversation may be an excellent time to give them a realistic picture of your estate and your goal of distributing your assets fairly.

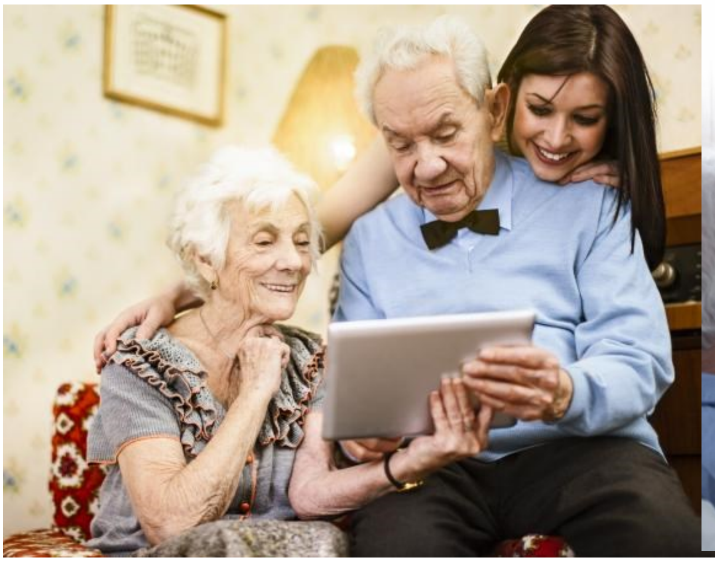
Your estate plan conversations are an excellent time to discuss those assets with a strong emotional attachment for some or all of the beneficiaries. One child may have a strong attachment to certain jewelry, while another feels passionate about a vacation home. Having an open and honest conversation about the things that hold strong emotional attachments can help avoid conflict and hurt feelings when the estate is distributed.

It is also better to have these conversations while you are alive, then leaving it to your Executor to surprise a disinherited child upon your passing. Be brave and do it!

Decide When to Distribute Your Wealth – It does not have to wait for your passing!

The time for your beneficiaries to receive their benefits does not have to be at the time of your death. Creating and distributing assets to a trust allows you to give your beneficiaries assets when those benefits are most useful.

A trust provides a flexible way to transfer wealth. Every trust should include a clear statement of the overall purpose of the trust and can also include your particular hopes for each beneficiary. The trust should allow for broad discretion tied to the stated purpose of the trust. You can also make non-binding recommendations for how the funds from the trust are used.

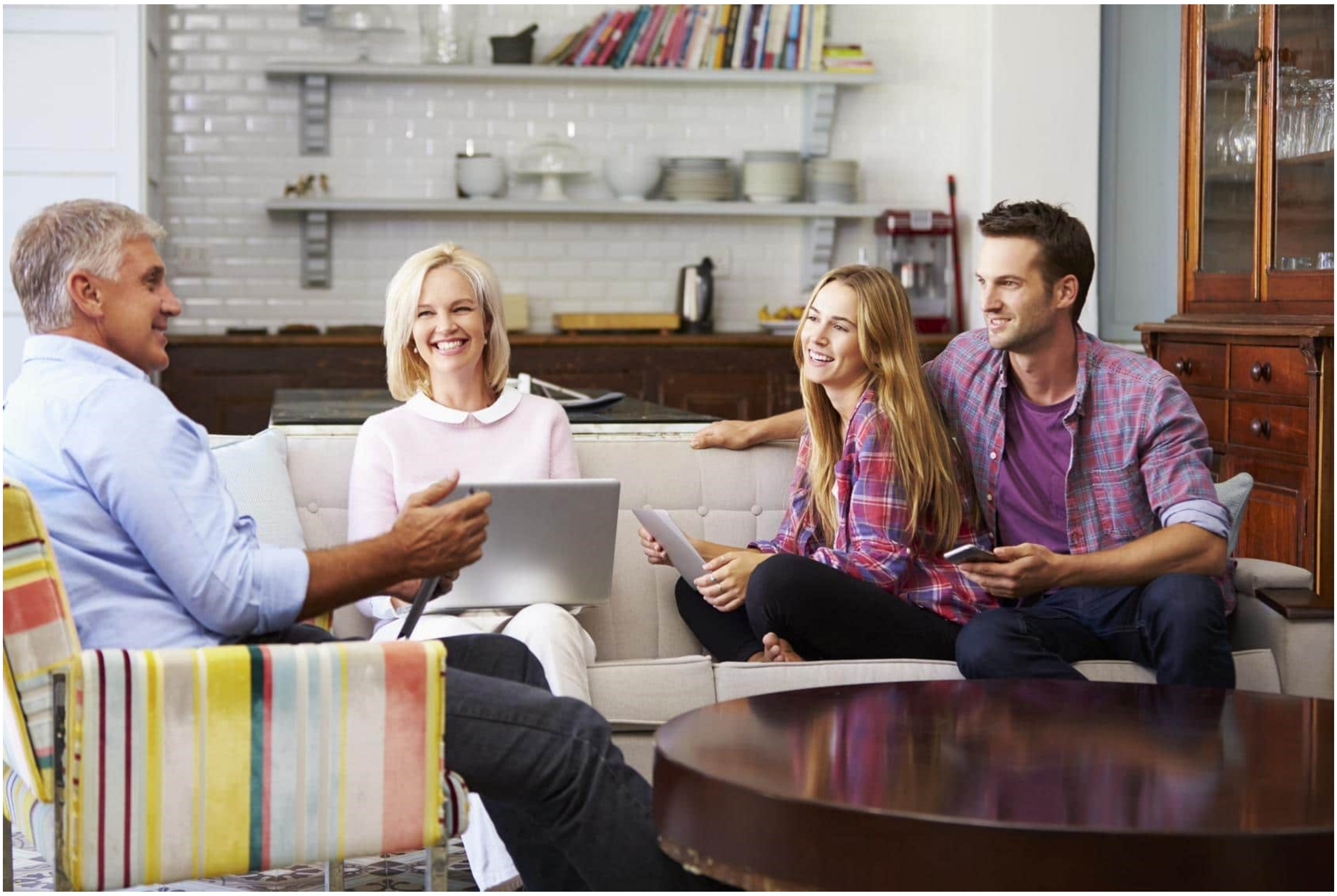


You have options when deciding when to distribute assets to beneficiaries. A skilled estate planning attorney will discuss these options with you and the pros and cons associated with each choice. The options for distribution include:

- Trust with outright distributions without restrictions. The distribution is triggered by the death of the creator of the trust. Advantages to this option is an easy administration of the trust and reduce costs associated with administration. One glaring disadvantage is that it fails to give your beneficiaries use and enjoyment of the assets until after your death.

- Staggered distributions happen when trust assets are held in the trust and distributed over time. The distributions are triggered by pre-determined beneficiary ages, certain life events, or on set dates. Staggered distributions require long-term trust administration, which will drive up costs. It is an advantageous tool in some situations, including when beneficiaries are minors or young adults.

- Discretionary distributions happen when the trustees of the estate determine the decision about when to distribute assets. Discretionary distributions often happen in incentive trusts, in Trusts for minors or in Trusts for special needs individuals. These trust types can also be used to encourage or discourage certain behaviors, such as a percentage of the distribution taking place upon college graduation. An incentive trust can also be used to deny distributions on specific grounds, such as drug use or criminal behavior. Incentives should be carefully considered and crafted to reduce resentment among beneficiaries.

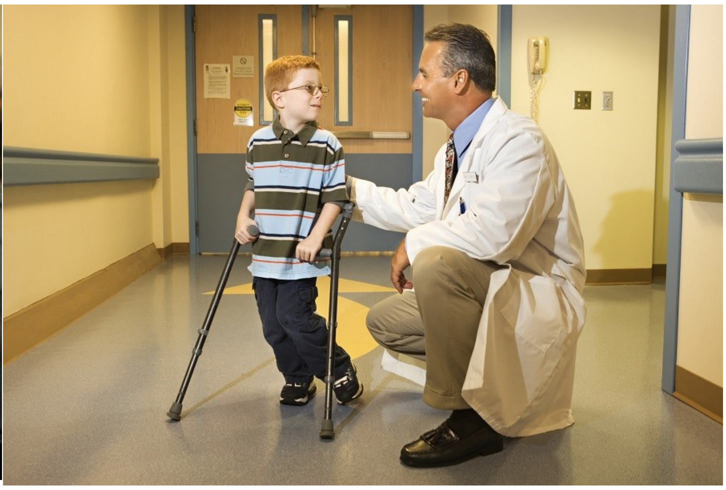


Give Consideration to Special Circumstances

Each family is different, and the needs of some children will far exceed the needs of others.

Special Needs Children: Families that have a special needs child will need to exercise extra care in developing an estate plan. If the child receives needs-based benefits such as Medicaid or SSI, a special needs trust is essential. A special needs trust allows parents to utilize their estate to support their special needs child without compromising the child's eligibility for public benefit programs.

The planning considerations will vary depending on the child's age, competency, and physical health. Creating a special needs trust will also impact the benefits available to siblings of the child with special needs. Including the siblings in the process of creating a trust for a special needs child can help ensure that everyone in the family understands the provisions you are making for a special needs family member.



Children Involved in Family Businesses. It may really be unfair to your children to leave your business equally to both children, when only one has been working in it for the past 20 years. One may have no interest or knowledge of operations, yet – if the business is left equally to both – will have just as much rights to make decisions about this business as the first child.

FINAL TAKEAWAY: There are multiple ways of ensuring that each child gets an equal amount of money while not receiving an equal share of each asset. There are also multiple ways of leaving your assets to children.

Book a strategy session with Sverdlov Law PLLC to discuss how to properly distribute your assets. Contact us today at (212) 709-8112 or book an appointment https://calendly.com/katyasverdlov.

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