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Settling an Estate

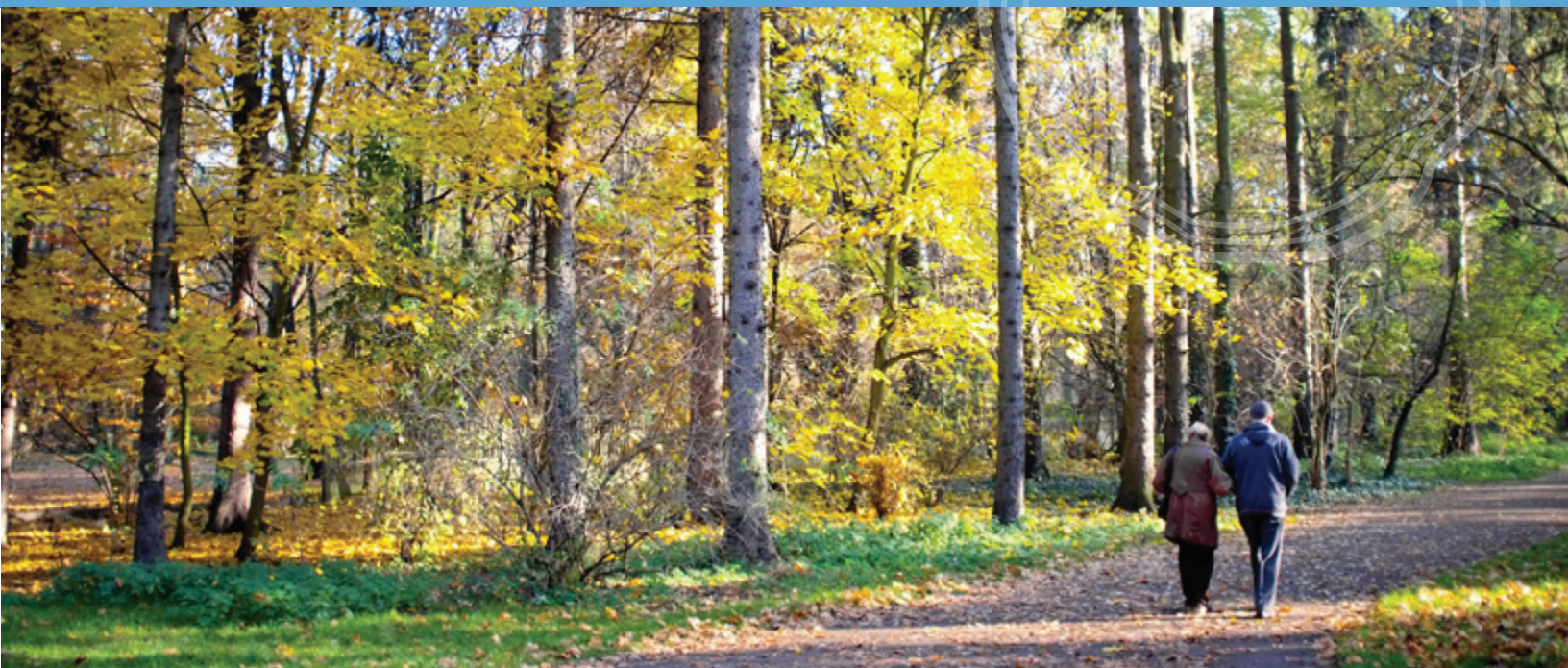
An Executor's Guide to Estate Administration



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Concentra Trust is a national trust company specializing in estate and trust solutions for over 65 years. Concentra's strength comes from deep roots in the co-operative system, built on shared values to grow and serve communities across Canada.

Being named an executor is a serious commitment



Being named an executor is a serious commitment, and many executors find themselves unprepared for the responsibility. It can be a new and challenging experience, often charged with emotion and complicated by your own sense of grieving.

Designed for executors and administrators of a Will or intestacy (no Will), this guide is intended to help you gain a deeper understanding of the complexities of estate administration so you can be better prepared as you work through the estate administration process.

Would you like help?

Concentra Trust offers executors a little or a lot of help – whatever you need, whenever you need it. Our expert team is professional, compassionate and understanding, and we’ve done this for over 65 years. We’re experienced in administering estates and trusts of all sizes or complexity, and we specialize in personalized service, impartial guidance, and giving executors sound peace of mind. Concentra’s team is here to help you navigate the intricacies of estate administration. Together, we’ll focus on the things that matter most.



Concentra Trust has specialized expertise in estate and trust administration services, whether you need a little or a lot of assistance.

After your complimentary consultation, you can select the services you require. The estate pays for the services selected.

Concentra Trust
800.788.6311 #1888
executorease@concentra.ca

Understanding an executor's roles and responsibilities

Acting as the executor for an estate involves a significant personal commitment. It's common for a relatively simple estate to require 12 - 18 months of your time to complete. An executor acts as the personal representative for a deceased person (Estate Trustee in Ontario, Liquidator in Quebec), and is responsible for settling the estate – also referred to as estate administration.

Estate administration happens under the watch and direction of the executor, and brings to a close a person's personal and financial affairs. As the executor or personal representative named in the Will, you are responsible to manage the estate from start to finish, regardless of the length of time required.

We often hear from people who have accepted an executor appointment without fully appreciating the time involved or the duties and responsibilities, much less the corresponding personal liability inherent with such a role.

As an executor, you are required to correctly interpret and carry out the terms of the Will, ensuring:

- all beneficiaries are treated fairly and equitably, and receive proper information and reporting
- assets are identified, located and protected
- debts, liabilities and taxes are discovered, and paid
- investments, real estate holdings, creditors and business interests are properly managed, and overseen
- estate assets are distributed to the correct beneficiaries in accordance with the terms of the Will and any applicable legislation

Executors are able to engage an agent, such as Concentra Trust (or an accountant or lawyer), to assist with estate administration. However, under the law, the executor personally retains full legal liability for the actions of their agents.

Concentra Trust has a team of experienced professionals who can assist you in understanding your role as executor and the associated responsibilities. We're well-versed in the complexities of estate administration and we're here to help you through the entire process.



Taking your first steps

Locating the Will

In a perfect world, you'll know in advance where to find the Will. Life isn't always perfect though, and your first step will be to locate it. Common places to look for a Will include safety deposit boxes, personal files, or a home safe. It could also be on file with a professional advisor such as Concentra Trust, a financial advisor, an accountant or lawyer.

In the absence of a Will, the situation becomes much more complex, and an administrator must be appointed. Concentra Trust can help you access professional advice to ensure you understand the issues and feel comfortable making informed decisions.

Validating the Will

A valid Will defines who will take control of the estate assets and make decisions on behalf of the estate.

Only a court can authenticate a Will as being valid, and this happens through the probate process. Someone must also review the document believed to be the Will, looking to identify any obvious issues or challenges. In some provinces, marriage or a common-law partnership can revoke a Will.

If there are concerns about the validity of the Will, or if there is a possibility a newer Will exists, it is important to seek legal advice before taking any further steps to administer the estate.

The executor

Once the Will is located and you've been notified of your role as the executor, you have the choice to decline the appointment - as long as you haven't started to administer the estate.

When a Will appoints more than one person to act as executor, unless the Will states otherwise, all executors must agree to every action being taken. The executors are jointly liable for the actions and decisions of the other executors.

As executor, you will take possession of identification cards, including driver's license, provincial health card, Passport, credit cards, etc. You will also need to obtain other personal documents, including prior years' tax returns.



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Funeral arrangements

There are many decisions to make when arranging a funeral, usually in a short time period. First, you'll need to determine if any provisions are already in place, such as a preplanned or prepaid funeral. If so, you should contact the funeral provider, who will be able to advise your next steps.

If there are no prior arrangements, as executor, you will need to select and meet with a funeral director. The funeral director will help guide you through these decisions:

- Where and when will the funeral be?
- Will there be an obituary and funeral announcement published in the local newspaper?
- Will there be a burial or cremation, and where will they be laid to rest?
- What format will be used for the service?
- Who will deliver the eulogy?

Arrangements should be in accordance with the late person's wishes, whether those have been shared verbally, described in the Will, or in other documents. Regardless of instructions or wishes from either the deceased or their family members, as executor, you are ultimately responsible for funeral arrangements.

Consideration should be given to the associated expenses and the ability of the estate to pay. In most instances, the financial institution holding the deceased's account will allow funeral expenses to be paid from this account.

If there are insufficient funds in the deceased's account to cover funeral expenses, the executor (on behalf of the estate) assumes the responsibility for providing "funeral and testamentary expenses". You may be personally liable to cover these expenses, until assets in the estate can be liquidated to pay for the funeral.



Settling an estate

On average, the time needed for an executor to settle an estate is approximately 12 to 18 months. Highly complex, multi-jurisdictional estates or contested Wills may take years. Factors contributing to successful administration include the types of assets and liabilities in the estate, how well the Will was drafted, family dynamics, and the experience of the executor.

Reviewing and interpreting the Will

One of your key duties as executor is to ensure the estate is settled according to the terms of the Will, taking into consideration any legal requirements imposed on the estate and the executor.

When a Will is prepared without professional assistance, such as a holograph, Will kit or fill-in-the-blank Wills, there is a higher probability it may not have been properly executed, or that it contains unclear, contradictory or unenforceable provisions.

As executor, you must thoroughly review and interpret the Will. Even when the terms of the Will appear to be simple and clear, it's wise to get professional assistance before taking any action. Executors could expose themselves to unnecessary personal risk and liability or make inappropriate decisions, especially if they are influenced by pressure from family or beneficiaries.

Communicating with beneficiaries

As executor, once you understand the terms of the Will and have identified any potentially contentious issues, it is important for you to communicate with the beneficiaries:

- Provide a copy of the Will to all residual beneficiaries.
- Explain the terms of the Will.
- As soon as you're able, provide the residual beneficiaries with a listing of the assets and liabilities (as at the date of passing).
- Set expectations on reasonable timelines for completing the estate administration and distributing assets, keeping in mind you will likely need at least 12 to 18 months.
- Request the necessary information you'll need from each beneficiary. At minimum, this will include their full legal name, address and SIN, in order to complete the estate administration process.



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Protecting the estate

As executor, you'll need to take the necessary steps to protect the estate against liability, handle all financial transactions, and protect the estate's assets against damage or loss.

The actions required will differ based on the types of assets in the estate you are responsible for administering.

Immediate action is required if there is potential for a lawsuit by or against the estate, or if there are circumstances which could cause a significant drop in the value of the estate's real property, personal property or business interests.

Financial transactions

- You'll need to contact each financial institution, requesting a 'deceased client' notice be placed on the account.
- You'll also need to open an estate account in order to receive cheques and cover expenses. Depending on the financial institutions involved, the Will may need to be probated through the court prior to opening an estate account.

Real property

- If the late person's home is now vacant, you will need to contact their insurance carrier, requesting a 'vacancy rider' be placed on the property. Be sure you understand how often you'll need to check the house in order to ensure its safety and coverage for insurance purposes.
- You should also consider changing or re-keying the locks.
- You will also need to cancel or continue utility services, as appropriate.

If you are planning to sell real estate held in the estate, remember that if owned solely, or as tenants-in-common, probate will be required to transfer the property. If listing the property before probate is granted, the realtors should be advised that offers to purchase are to be made 'subject to obtaining probate'.

Personal property

- As executor, you will be responsible for taking possession of valuable items and/or placing them in safekeeping until they can be distributed to beneficiaries, sold, or otherwise managed.
- You'll need to ensure adequate insurance is in place, covering all valuables.
- If there are pets, you'll need to determine if there are instructions for who should care for them. In the absence of any direction, you'll need to ensure they are cared for.
- Digital assets will also require your attention. Whether it's Facebook, LinkedIn, Twitter, iTunes or another digital platform, each has its own policy (or should have). It's easy to underestimate the monetary value of some of these digital assets.

Advertising for creditors

- Advertising for creditors and claimants on-line or in the local newspaper or Gazette (check the rules for the province where the deceased resided) helps to ensure all debts and obligations are identified.
- In the event this step is not taken, as executor, you may be personally liable for any valid claim on the estate, even after the assets have been distributed - unless the beneficiaries are willing and able to cover those claims from their inheritance.

Gathering personal and financial information

In order to move forward with administering the estate, you will need to gather personal and financial information. In addition to the personal identification and credit cards you've already obtained, one of the best sources of personal and asset information is to review the deceased's tax return. A safety deposit box may also contain important information such as life insurance policies or stock certificates, or other assets such as coins or jewelry.

Inventory and valuation of assets and liabilities

As executor, you will need to create an inventory of all assets and liabilities belonging to deceased, valued as at the date of passing.

The letters you write to request this information will need to include proof of death, as well as a copy of the Will in order to demonstrate your authority as executor, to act on behalf of the estate. There may also be situations requiring submission of a death certificate, as issued by Vital Statistics.

You'll be required to contact:

- Financial institutions and investment advisors to obtain the principal value and accrued interest, to date of death, for each account. The financial institution will require the following:
 - Original Will (the financial institution will take a photocopy)
 - Funeral invoice to be paid or funeral invoice receipt
 - Safety deposit box keys, if applicable
- Service Canada and other government departments to provide notification of death
- Canada Pension Plan to apply for the CPP death benefit, if applicable
- Canada Post to re-direct mail
- Life insurance companies regarding any insurance payments
- Pension plan administrators to determine if there is a death benefit
- Credit card companies or lenders to confirm balance owing and accrued interest to date of passing, and whether any liabilities were life insured.

As executor, you will need to know how assets are registered (solely, jointly with right of survivorship or tenants in common), and whether there is a "designated beneficiary" for assets such as registered plans, pensions or insurance. These determinations affect preparation of income tax returns and the distribution of assets.



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Probating the Will

Probate is the legal process to validate a will and formally confirm the appointment of the executor. A grant of probate (Certificate of Appointment of Estate Trustee in Ontario) is a document sealed by the court which legally authorizes the executor named in the Will to proceed with administration of the estate. As executor, you should always keep the original grant of probate, sharing a notarized copy of the document with anyone who requests it.

These are a few instances when probate could be required:

- Real property is solely owned or as tenants in common by the late person.
- A transfer agent requires probate to deal with shares held in a publicly traded company.
- A financial institution requests probate in order to release funds held on deposit.
- A testamentary trust is established under the Will.
- There are beneficiaries under the age of majority.
- The executor has pre-deceased or renounces, and no alternate executor is named.

Certain assets and some estate issues can only be dealt with after probate is obtained. Even when an estate is probated, there may still be assets, such as insurance policies with a named beneficiary, that are exempt from probate and the terms of the Will.

In addition, provincial legislation requires provisions for a spouse or child. If these are not in place, there will be a prescribed waiting period before assets can be distributed. As the executor, you could be personally liable for any losses if you do not comply with this legislation.

It's wise to consult an estate professional on the benefits and costs associated with obtaining probate, before making the final decision.

Each province and territory requires completion of different forms in the probate application, but basic information includes:

- the deceased person's full name or aliases, address, date of birth, place of death, etc.
- the original Will, with affidavits from the witnesses
- a sworn affidavit from the executor(s)
- information about the beneficiaries, such as full legal name, address, age, share of the estate
- an inventory of the deceased person's assets and liabilities, establishing the value of the estate
- a cheque, paid by the estate, to cover the probate fees/estate administration tax

The forms must be completed correctly, or the application will be returned to the executor. The time required for the court to process an application can vary from a couple of weeks to several months. A lengthy delay could result in a number of unwanted situations, including falling real estate values, unhappy creditors, or angry beneficiaries.

Concentra Trust offers professional assistance in preparing the application for probate, and can provide support to help you navigate the entire process.



Executor EASE is a flexible, affordable solution that allows you to choose as much assistance as you need to administer an estate. It begins with a no-cost, no-obligation consultation with a trust specialist. During the consultation, our specialist works with you one-on-one to understand the complexities and needs of the estate and will provide a variety of appropriate options.

We work with teams of legal and estate professionals across Canada to provide assistance with preparation of the probate application or all of your executor duties. The estate pays for the services selected.

Taxes

As executor, you're responsible for ensuring all necessary income tax returns are filed. Depending on the nature of the estate's assets and when during the year the individual passed away, it may be necessary to complete and file multiple tax returns. In addition, as executor, you'll be required to make any income tax elections on behalf of the deceased and their estate.

In all cases, you will need to file a Terminal or Final T1 return, reporting income from January 1 of the year of death to the date of passing. You'll need to include a copy of the death certificate and a copy of the grant of probate with the T1 return.

Additionally, you must also report any income received from the date of death until the date the estate's assets are distributed. This income is reported on a tax return, known as a T3 Trust return.

Once all tax returns, including the T3 Trust return, have been assessed and balances paid, you will be in a position to apply for a Canada Revenue Agency Clearance Certificate for Distribution Purposes. The Clearance Certificate enables you to distribute remaining assets from the estate (the residue), without incurring personal tax liability.



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Distributing assets

Before you're able to proceed in fully distributing assets to beneficiaries, you must ensure all debts, testamentary expenses and taxes have been paid, and that all claims against the estate have been satisfied. If claims arise after the assets are released, you would be personally liable to cover these costs if you're not able to recover the necessary funds from the beneficiaries.

It is best practice to ask beneficiaries to sign and return a release form approving the executor's accounts and compensation, prior to making any interim distribution of assets. This approval and release will help to indemnify you, as the executor, against future claims from beneficiaries.

After debts and expenses have been satisfied, and provided there are sufficient residual assets to cover all taxes, the executor may then distribute the specific bequests. These may be gifts of money or specific items, as well as personal or real property. The estate is required to pay any costs necessary to carry out distributing these gifts, unless the Will directs otherwise.

A chronological accounting of transactions undertaken in the estate's administration to date must be provided to beneficiaries at this point in time.

The residue is the remaining assets left to be distributed, either directly to the residual beneficiaries, or to a trustee to be held in a trust created under the Will (referred to as a testamentary trust).

In the event of a testamentary trust, you will need to provide a copy of the probated will and establish an account to receive and invest the funds. As long as the funds are held in the testamentary trust, the executor is required to file annual tax returns and statements of account for this trust, unless another trustee was named in the Will to administer the trust.

Concentra Trust offers long-term, professional assistance to ensure a trustee's obligations are fulfilled and decisions are made prudently. The complexity and duration of testamentary trusts makes our guidance and support particularly helpful for these scenarios.



Regular reporting to beneficiaries

Reporting to beneficiaries is an ongoing process. As executor, you'll need to provide regular reporting to beneficiaries, ensuring they are aware of and understand the actions you are taking to administer the estate. One of the most common complaints we hear from beneficiaries is when an executor isn't communicating regularly.

Although continuous communication is important (see page 5), there are certain milestones in the estate administration process where communication is critical:

- After debts, bequests and legacies are satisfied, the executor is required to provide an accounting of the estate administration to beneficiaries. This accounting is a chronological account, a detailed history of the estate's assets and liabilities, and any transactions resulting since the date of passing. If you're planning to make an interim distribution after receiving the T3 Final Notice of Assessment, you must include with the accounting a schedule of distribution, setting out the manner and amount of assets to be distributed from the estate. Additionally, you'll need to obtain a release from the beneficiaries prior to issuing an interim distribution of assets to residual beneficiaries.
- Once the Canada Revenue Agency Clearance Certificate is received and you are ready to do a final distribution, a final accounting must be provided to beneficiaries before the estate is closed. You will request approval for both the distribution and compensation, if you intend to charge a fee.

If any beneficiaries refuse to approve the executor's compensation, you would be required go through mediation, or obtain a court ruling to approve the compensation.



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Wrapping up administration

Once you, as executor, are content all debts have been paid, all obligations have been satisfied, and all releases have been returned, you can make a final distribution from the estate, provide a final accounting to the beneficiaries, and close the estate account.

How do I know if I need help?

Acting as executor and administering an estate can be time-consuming, complicated, and potentially accompanied by unexpected personal liability. Combined with your own personal grieving process, these obligations and responsibilities can seem overwhelming.

Concentra Trust can help ease the burden, diminish conflict, reduce expenses to the estate, and increase security of assets, especially in circumstances when the:

- person did not leave a valid Will
- person was embroiled in legal proceedings prior to their passing
- beneficiaries are in conflict over distribution of estate assets
- estate includes complex or significant assets and liabilities
- estate includes offshore or out-of-country assets
- person owned their own business
- you as executor don't have the time or expertise to deal with all aspects of the estate administration

Concentra Trust encourages individuals to seek the advice of trained professionals with experience in estate planning and administration.

While the information presented in this guide is intended for a general audience, suitability will depend upon a number of factors, such as the current laws and practices in your jurisdiction, your individual situation, and your personal needs and preferences.

The information in this guide cannot be considered to be legal, tax, real estate or financial planning advice, nor a substitute for professional advice. Concentra does not warranty, guarantee or otherwise represent that any information in this guide will be effective, accurate or reliable for use by you without professional advice. Concentra shall not be liable for any errors or omissions in the information provided, nor for any loss incurred by you, organizations or their clients, either directly or indirectly, through the use of, or reliance on the documents or the information.

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Glossary

administrator	The person appointed by the court to manage and take charge of the assets and liabilities and handle the estate of someone who died without a Will, with a Will or no nominated executor, or the executor named in the Will has died, has renounced or has been removed.
beneficiary	A person or entity named in a Will or financial or insurance contract as the inheritor of property when the property owner dies. A beneficiary can be a spouse, child, charity, or any entity or person to whom the property owner would like to leave his or her possessions and assets. Caution must be exercised when someone other than a qualified beneficiary has been named on registered plans such as RRSP or RRIF.
bequest	The act of giving or leaving personal property by a Will; something that is bequeathed; a legacy.
estate	The net worth of a person at any point in time. It is the sum of a person's assets – legal rights, interests and entitlements to property of any kind – less liabilities at that time. The estate of a deceased person consists of all the property, whether real or personal, owned by the person at the time of death.
estate administration	Process by which the deceased person's personal and financial affairs are brought to a close.
executor	An executor (female form = executrix) is the person or entity nominated by the testator (or Will maker) to carry out the directions of the Will.
grant of probate	A document sealed by the court which legally authorizes the executor named in the Will to proceed with the administration of the estate.
intestate	Not having made and left a valid Will. (Verb) A person who dies without leaving a valid Will. (Noun)
jurisdiction	The practical authority granted to a legal body to deal with and make pronouncements on legal matters. The term is also used to denote the geographical area or subject-matter to which such authority applies.
liability	An obligation that legally binds an individual or company to settle a debt. Legal liability is the legal bound obligation to pay debts.
liquidate	To convert to cash.
personal representative	In common law jurisdictions, a personal representative is the generic term for an executor for the estate of a deceased person who left a Will, or the administrator of an intestate estate.
prescribed	To set down as a rule or guide; to establish rules, laws or directions.
probate	The legal process by which a person's Will is reviewed and, if valid, authenticated by the court as the individual's "last Will".
real property	A classification of property in common law that refers to land; also termed realty, real estate and immovable property.
residue	Whatever is left to be distributed directly to the residual beneficiaries or to a trustee to be held in a trust created under the Will.
rider	Addendum, an additional provision attached to a contract, such as an insurance policy.
testamentary	Of, pertaining to or of the nature of a testament or Will; given, bequeathed, done or appointed by Will; set forth or contained in a Will.
testamentary trust	A trust created within a will which does not take effect until the death of the testator.
Will	A legal declaration by which a person, the testator, names one or more persons to manage their estate and provides for the transfer of their property at death; a document or legal instrument in which a person specifies the method to be applied in the management and distribution of their estate after their death.

¹ Estate Trustee in Ontario

² Certification of Appointment of Estate Trustee in Ontario

Concentra. The name to trust.

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We specialize in personalized service, impartial guidance and peace of mind for Canadians.



Platinum member

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