

ATTACHMENT 7-B-1 TRANSFER APPLICATION DOCUMENTS

The following is a list of the documents constituting a complete application for Rural Development approval of a proposed transfer. Rural Development processing will begin only when a complete transfer request package has been submitted.

Transfer requests must be submitted at least 45 days prior to the proposed transfer approval date. [*7 CFR 3560.406 (c)*]. Unless otherwise noted, all documents are to be submitted at the time of application. Form numbers and references to applicable guidance are shown in italics.

The Proposed Transaction

1. Executive Summary. An executive summary of significant aspects of the proposed transaction. Because each of the following will be supported by more detailed information that will also be provided, discussion should be brief in the executive summary. The following should be discussed:

A. Acceptable Reason for Transfer. Why the transfer satisfies at least one of the following (see paragraph 7.5).

- Facilitates the physical and financial revitalization of the property.
- Needed to remove a hardship to the current borrower that was caused by circumstances beyond the borrower's control (circumstances constituting 'hardship' are discussed in Paragraph 7.5).
- The transfer is a result of a court order requiring the division of security property.
- The transfer is being requested as an alternative to prepayment. Chapter 15 of HB-3-3560.
- The transfer will do no harm to Rural Development or tenants.
- Other circumstances exist which make the transfer in the best interest of the Government and the tenants of the project.

B. How the proposed transaction will improve or maintain:

- The viability of the property. Discuss the nature and extent of repairs. If the project is in an area experiencing economic stress, or if the project is experiencing occupancy challenges, discuss plans for ensuring that the project remains viable.
- The likelihood of loan repayment to Rural Development.
- The quality of housing for the tenants.

- C. Any concerns previously identified by Rural Development (e.g., maintenance issues, compliance findings) and how these concerns will be addressed.
- D. Proposed purchaser.
- E. Proposed management.
- F. Establish that the purchaser has site control. For example, sit control can be established through an option to purchase, or through a purchase and sale agreement.
- G. If the new proposed Return to Owner (RTO) differs from the RTO currently applicable to the seller, explain the reason for the proposed change and show that the proposed change is in accordance with applicable Rural Development requirements. See paragraph 7.0 and Exhibit 7.3
- H. Any financial commitments, financial concessions, or other economic benefits proposed to be provided by Rural Development. For example:
 - A change in rents
 - A change in interest rate or loan term or amortization.
 - Rental Assistance.
 - A subsequent Section 515 loan.
 - Subordination in lien position.
- I. Third-party funding. For each third-party funding source, discuss briefly (providing highlights of the more detail information called for under items 19 through 23 below):
 - Funding provider (names of debt/equity providers).
 - Commitment status (e.g. application submitted, conditional commitment received). Unless all non-USDA funds are fully committed, including a discussion explaining how the proposed transaction will change if some or all of the conditionally committed funds are not realized.
 - Timing issues, including:
 - ◇ Any deadlines for Rural Development approval of the transfer, or for closing the transfer.
 - ◇ When the proposed third-party funding is expected to be available to the project.
 - ◇ For loans, when it is anticipated that debt service payments will start, and how debt service payments will be funded prior to the time that Rural Development will allow project operating funds to be used to pay debt service.
 - Any restrictions that will be applicable to the project and/or the purchase, for example rent limitations, tenant eligibility requirements, and regulatory agreements. Discuss the nature and duration of any such requirements.

- Whether any accommodation by Rural Development (such as subordination in lien position) is proposed.
 - J. Any proposed compensation to parties having an identity of interest with either the seller or purchaser.
 - K. Any proposed interim financing (for example, a construction or bridge loan) that may be needed to pay for uses prior to the time that third-party funding sources become available.
2. **Required written statements.** If there are exceptions, the statement should be worded accordingly and should include an explanation of any exceptions. For example, “there is no identity-of-interest ... except that [include explanation].” If information is being provided by key principles to mitigate shortcomings in the transferee they will be added to this section and signed by the parties involved.
- A. **Joint Statement Concerning Project Equipment and Accounts.** Acknowledgement by the seller and purchaser that, “Rural Development will require the borrower to transfer all equipment, related facilities, and housing project financial accounts to the transferee including the operation and maintenance account, reserve account, tenant security deposit account, tax and insurance escrow account”. See [7 CFR 3560.406(k)].
 - B. **Joint Statement Concerning Identity of Interest.** “A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold.” See [7 CFR 3560.406(c)(1)].
 - C. **Joint Statement Concerning Environmental Review.** Statement by the seller and purchaser that, “The proposed transfer will not alter the purpose, operation, location, or design of the project as originally approved.”
 - D. **Joint Statement Authorizing Release of Information to Rural Development (if third-party funding is proposed).** Authorization from both the seller and purchaser to each third-party funder authorizing the third-party funder to release information to Rural Development.
 - E. **Seller Statement Concerning Project Financial Condition.** The seller’s statement “Certifying that the housing project’s financial accounts are funded at required levels, less authorized withdrawals, and that payments due for operation and maintenance expenses, tax assessments, insurance premiums, any required tenant security deposit accounts, and other obligations incurred as a part of the housing project operations are paid in full with no overdue balances or a statement explaining the housing project’s financial situation and the reasons for overdue payments or under-funded accounts.” See [7 CFR 3560.406(c)(2)].
 - F. **Purchaser Statement Concerning Transfer.** The purchaser’s written statement, signed by the proposed transferee or buyer, “Certify that the transferee or buyer will assume the borrower responsibilities and obligations specified in Rural Development program

requirements including requirements in a promissory note, loan agreement or other documents related to Rural Development loans held by the borrower entity.” See [7 CFR 3560.406(c)(4)].

- G. Joint Statement Concerning No Reversionary Interest.** “A certification from the borrower and the proposed transferee or buyer that the borrower does not and will not have a reversionary interest in the housing project.” See [C CFR 3560.406(c)(5)].
 - H. Purchaser Statement Concerning Tenant Certifications.** The purchaser’s plan for complying with the requirement that transferee must, “Ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with Rural Development.” [7 CFR 3560.406(d)(10)].
 - I. Purchaser Statement Concerning Financial Reports.** “The purchaser’s agrees to submit financial reports to Rural Development as required under 7 CFR part 3560, subpart G.” [7 CFR 3560.406(d)(12)].
 - J. Purchaser Statement Concerning Credit (if applying for a subsequent loan).** The purchaser’s statement (accompanied by documentation acceptable to Rural Development) that, “The purchaser is unable to obtain sufficient credit elsewhere at rates that would allow for project rents within the payment ability of eligible residents.” Documentation may include letters from lenders or a certification from the applicant which identifies the lenders contacted along with rates and terms quote from lenders.
 - K. Seller Statement Concerning Five-Year Requirement (if applicable).** If the seller has owned the project less than five years, “The sellers acknowledges that the sellers will be ineligible for further Rural Development loans for the remainder of the 5-year period beginning on the date the seller acquired the project.” Paragraph 7.5 A.
 - L. Purchase Statement Regarding Appraisal.** A statement by the purchaser that that reflects, “The market value appraisal referenced in item 13 below was completed in accordance with HB-1-3560, Chapter 7, Attachment 7-C.” In addition, the purchaser must acknowledge whether there are any current restrictions or prepayment prohibitions on the property and must state that, “All restrictions and prepayment prohibitions were considered by the appraiser in determining the market value.”
- 3. MFH Transfer & Assumption Application Supplement.** Attachment 7-B-2.
 - 4. Partial Release or Subordination (if applicable).** If the proposed transaction includes partial release or subordination of Rural Development’s lien, include Application for Partial Release. *Form RD 3560-1.*
 - 5. Purchase and Sale Agreement.** Submit the applicable document, executed by purchaser and seller, in its entirety, including all attachments and amendments. Include any side agreements. The document must clearly recite all consideration to be paid to the seller, [7 CFR 3560.460 (d)(6)]. Purchasers and sellers may use *Form RD 440-34* as the purchase and sale agreement.
 - 6. Current Preliminary Title Report.** 7 CFR 3560.406.(d)(13)]. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D.)

7. **Legal Services Agreement.** [7 CFR 3560.62(a)]. Provide a copy of any written contract for legal services that will be paid with Rural Development loan funds.

The Project and Proposed Repairs

8. **Capital Needs Assessment (CNA).** See Paragraph 7.22. The CNA will be reviewed by the Rural Development CNA Reviewer and may need to be revised or adjusted to conform to Rural Development program requirements. Final approval of the CNA must be provided by the Rural Development CNA Reviewer prior to final approval of the transfer. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D).
9. **Current Self Evaluation/Transition Plan.** See HB-2-3560, Chapter 3, Paragraph 3.5. Submit a current (less than 3 years old) Self Evaluation/Transition Plan, if applicable and completed in accordance with 7 CFR 3560 15b.
10. **Repair Agreement** [7 CFR 3560.406 (d)(7)]. May be omitted for Deceased Borrower transfer (Paragraph 7.8 B 6). This should be developed in light of the CNA and should address the following:
- A. Must be signed by seller and purchaser.
 - B. Must address known compliance issues.
 - Must identify all repairs known by the borrower to be necessary to bring the project into compliance with Rural Development requirements.
 - Must include any repairs required to correct any compliance violations previously cited by Rural Development.
 - Repairs to correct compliance issues must either be completed by the seller prior to transfer, or be subject to a workout agreement between the Rural Development and the purchaser.
 - C. If the CNA was prepared on the assumption that certain repairs have been completed, provide:
 - Evidence of Rural Development approval of the repair agreement and cost estimate for the third-party funded repairs.
 - Cost estimate for the repairs.
 - Month-to-month estimate for repair expenditures.
 - How the repairs are proposed to be funded.
 - D. Tenant relocation costs if tenant relocation is necessary to rehabilitate the property.

- E. The repair agreement must identify each up-front repair or enhancement item, the timeframe for completion, estimate of costs for each item, funding source for each phase of completion, who will do the work, and any Identify of Interest between the transferee and the party doing the work or providing materials and services.
- F. Division of responsibility for repairs between purchaser and seller.
- G. If equity is proposed to be paid out prior to completion of repairs, a guarantee acceptable to Rural Development that any repair costs in excess of the estimate will be paid from non-project funds.

11. Cost Estimate (if applicable). Form RD 1924-13. *“Estimate and Certificate of Actual Cost”*. Applicable if repairs will be funded by Rural Development.

Documentation of Market Rents and Value

Rural Development strongly recommends that purchasers consult with Rural Development before ordering appraisal products, to verify that the correct instructions are being provided to the appraiser. See HB1-3560, Chapter 7 and Attachment 7-C for Rural Development requirements regarding instructions to the appraiser. Purchasers may request that Rural Development provide Attachment 7-D of HB-1-3560 Information Sheet. Purchasers may request Rural Development assistance in assembling the information referenced in Attachment 7-F of HB-1-3560 Appraisal Data Package Checklist. In all cases, appraisals will be required when new debt is added or when the transfer will be using new rates and terms. For transfers processed on ‘same rates and terms’ where no new Rural Development debit is requested, the Loan Servicer may waive the appraisal requirement if the Loan Servicer determines that the security is adequate for the Rural Development indebtedness being assumed. Appraisal fees are purchaser/seller expense and may not be paid from project funds. Loan Servicers must document their review and determinations based on a review of Rural Development reports conducted in accordance with the requirements of [7 CFR part 3560, subpart H (3560.3511 through 3560.400)].

12. Market Value Appraisal “Prospective Market Value, Subject to Restricted Rents within 7 CFR 3560.752 (b) (1) (i)”. Rural Development staff will use this appraisal in order to determine security value. See HB-1-3560, Chapter 7 and Attachment 7-C for appraisal guidance.

- A. The instructions to the appraiser must include language specified by Rural Development (see HB-1-3560, Attachment 7-C).
- B. This appraisal is required if the sum of the USDA loan balance at the time of transfer, plus any subsequent loan, will exceed \$100,000. This may be omitted for Deceased Borrower transfer (Paragraph 7.5 D).

13. Market Value Appraisal – “Market Value, within 7 CFR 3560.752 (b)(1)(ii) with any current restrictions or prohibitions currently existing on the property taken into

consideration”; or “Market Value with 7 CFR 3560.752 (b)(1)(ii) Premised upon a Hypothetical Condition As-If Unsubsidized Conventional Housing.” This appraisal establishes a value for used in analyzing the Rural Development’s limitations on sale price and equity pay-out. See HB-1-3560, Chapter 7 and for appraisal guidance.

- A. This appraisal is required whenever an equity pay-put is proposed to the seller.
- B. The instructions to the appraiser must include language specified by Rural Development (See HB-1-2560, Chapter 7, Attachment 7-C).
- C. If, at the time of the appraisal, a Restrictive-Use Provision or Restrictive-Use Covenant will be in effect, see HB-1-3560, Chapter 7, Attachment 7-C regarding Rural Development requirements that restrict (and may prohibit) the inclusion as a component of market value any value of the hypothetical future ability of the owner to convert the property to conventional housing use.

14. Rent Comparability Study (RCS) or Area Market Rents Study (ARMS). If neither of the preceding appraisal products is required for this transaction, an acceptable RCS or ARMS may be required to establish Conventional Rents for Comparable Units (CRCU).

- A. See Paragraph 7.7 B regarding when an RCS may be used.
- B. If an RCS is used, Rural Development’s Statement of Work must be used. See Paragraph 7.7 B.

15. If No Appraisal Product is required. Submit the purchaser’s best available evidence for CRCU. See Paragraph 7.8 F. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

Financial Aspects of the Transaction

16. Application for Federal Assistance. Form SF-424. Required for all transfers other than Deceased Borrower transfers (Paragraph 7.5 D).

- A. Application for Federal Assistance. *Form SF-424.*
- B. Budget – Construction Programs. *Form SF-424C.*
- C. Assurances – Construction Programs. *Form SF-424D.*

17. Proposed Project Budget. Required for all transfers. Purchaser’s proposed project operating budgets covering the first year of operation following the transfer or sale. This budget form should set forth the project’s current Rural Development – approved budget in the “Current Budget” columns and the projects’ proposed budget after acquisition in the Proposed Budget columns.

- A. *Form RD 3560-7.*
- B. Narrative justification of changes in budget. It is important that any and all differences between the current and proposed budget be fully explained and justified.

18. Sources and Uses of Funds Statement. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D). Must be accompanied by a certification that:

- A. All sources of funding contemplated by the purchaser are included.
- B. Itemizes each proposed use of funds to be paid to the seller, the purchaser, any affiliate of the seller, or any affiliate of the purchaser. Each such use will identify the proposed amount, identify the entity to whom it is to be paid, disclose the nature of any identify of interest or affiliation with seller and/or purchaser, and discuss why the proposed amount is reasonable. If any portion of the amount to be paid to the seller will remain unpaid after the closing of the transfer, the purchaser must certify that no project revenue or assets (other than authorized RTO earned and paid to the purchaser) may be used to pay such amounts and that the purchaser's obligation to pay such amounts will be unsecured.

Note Regarding Evidence of Insurance Coverage. See Paragraph 7.16 F and [7 CFR 3560.406(d)(11)]. Evidence of insurance coverage is not required as part of the transfer application package. However, the transfer cannot be closed until Rural Development has approved the purchaser's insurance coverage.

Third-Party Funding (If Applicable)

- 19. **Application for Funding.** Any application submitted by the purchaser to the proposed funder.
- 20. **Financial Pro Forma Information.** Include any estimates of repair costs, any information regarding proposed sources and uses of funds, and any revenue and expense projections submitted to the proposed funder, whether or not such documents were included in the application.
- 21. **Environmental Information.** Any environmental reports or analyses submitted by the purchaser to the proposed funder.
- 22. **Commitment Letter or Equivalent** (if applicable). Commitment letters may be conditional at the time of application. For LIHTC/TCAP/TCEP funding, provide a copy of the following: the reservation letter, any subsequent correspondence from the state allocating agency, and any Letter of Intent or similar correspondence from the proposed equity investor describing terms and conditions of its proposed investment. Before the transaction may be closed, the following will be required:
 - A. Commitment Letter
 - B. Documentation that any conditions in the commitment letter have been satisfied.

23. Regulatory Requirements. Documentation for any requirements to be imposed on the project and/or the purchaser as a condition of the proposed third-party funding.

A. For Low-Income Housing Tax Credits:

- The proposed Land Use Restriction Agreement or equivalent, showing the LIHTC set-aside by income level and unit type; and
- The current LIHTC income limits and maximum rents for the county in which the project is located.

B. For a proposed loan, a copy of the proposed loan agreement, note, security instrument (if applicable) and regulatory agreement (if applicable).

C. For a proposed grant, a copy of the proposed grant agreement and regulatory agreement (if applicable).

24. Interim Financing.

A. Include a month-by-month projection of interim financing draws and interest cost. This projection should take into account:

- Applicable Rural Development requirements regarding the use of project operating funds to pay debt service. See Paragraphs 7.7 C and 7.12 A.
- Any net interest cost for permanent loan funds that are borrowed up front but not available to the project until funding conditions (such as completion of rehabilitation) have been satisfied.
- Monthly costs for rehabilitation and other costs.
- Monthly receipts from other sources of funds such as tax credit equity.

B. If a source of repayment is from tax credit equity, the schedule of equity pay-in from the syndicator.

C. If a source of repayment is from permanent financing, the funding conditions that must be satisfied before the permanent financing will be available to the project.

25. (Advisory to purchasers, no submission required) Sources and Use Comprehensive Evaluation (SAUCE) Analysis. Purchasers proposing to use a subsequent Rural Development loan should note that Rural Development must prepare a SAUCE analysis, or accept the tax credit agency's sources and uses analysis, as a pre-requisite to the closing of the transfer. A SAUCE analysis is not required for transfers not utilizing a subsequent Rural Development loan.

The Proposed Purchaser

For purposes of the following documents, the terms "principal" and "affiliate" and "participation" are defined in *Form HUD-2530 Previous Participation Certification*.

- 26. Purchaser's Resume.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).
- A. Proposed organizational structure.
 - B. Resume for each principal of the purchaser who has no previous participation with Rural Development. Resumes should be in sufficient detail for Rural Development to understand the nature of the new principal's real estate experience.
 - C. Disclosure of any proposed role(s) in the ownership or management of the project by affiliates of the purchaser or affiliates of the seller.
- 27. Previous Participation Certification (Form HUD-2530).** This form reflects the participation by principals of the proposed purchaser in other HUD and USDA multifamily projects over the past ten years. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D).
- 28. Identity of Interest Certification.** As applicable, either:
- A. Certification of No Identity of Interest, *Form RD 3560-30*; or
 - B. Identity of Interest Disclosure, *Form RD 3560-31*.
- 29. Debarment/Suspension Certification.** As applicable, either:
- A. Certification Regarding Debarment, Suspension and other Responsibility Matters *Form AD 1047*; or
 - B. Certification Regarding Debarment Suspension: Ineligibility and Voluntary Exclusion *Form AD 1048*.
- 30. Purchaser's Financial Statements.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D). Current financial statements for:
- A. The applicant (i.e., the entity that will own the project). If the applicant is an entity that has not yet been formed, financial statements should be *pro forma* (after completing the proposed purchase).
 - B. Each proposed principal.
 - C. Non-profit applicants/principals may satisfy this requirement by submitting their current *IRS Form 990 "Return of Organization Exempt from Income Tax"* (with Schedules A & B).
 - D. Attachment 7-B-4, MFG Transfer & Assumption Certification for Financial Statements, must be included with all financial statements.
- 31. Credit Report Fees.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D), Purchaser's check, made out to USDA, for the required credit reports obtained initially as part of the transfer application and subsequently for any additional credit reports necessary prior to closing to verify the applicant's continued eligibility for participation in the transfer. Contact your local Rural Development Office to verify what the current credit reports fees are (current fees as of February 2008 are \$28 for each individual and \$40 for each other principal; e.g. a corporation or partnership).

- A. The purchaser.
- B. Each general partner of a purchaser that is a partnership, and spouse.
- C. Each managing member of a purchaser that is an LLC, and spouse.
- D. Each other partner/member who will have a 10 percent or greater interest.
- E. If an entity is existing or newly-formed, order a credit report. If an entity is to-be-formed, order a credit report (s) for existing principal(s) of the entity.

32. Attorney Certification of Eligible U.S. Citizenship/Qualified Alien Status. The purchaser's attorney must review all applicable evidence to verify U.S. citizenship and/or qualified alien status, must certify that the Agency's U.S. citizenship and/or qualified alien status eligibility requirements are met by each proposed principal applicant, and must submit the certification for Agency review.

Proposed Management

33. Management Plan. The purchaser may satisfy this requirement by accepting the existing Rural Development-approved management plan and lease and occupancy rules of the seller. The management plan should include:

- A. A narrative description of the proposed record-keeping system.
- B. A copy of the proposed lease.
- C. A copy of the proposed occupancy rules.

34. Attorney Opinion Regarding Proposed Lease. This is required only if the purchaser will not continue to use the Rural Development-approved lease currently used by the seller. Transferee attorney's opinion regarding legal sufficiency and compliance of lease with State/local laws, ordinances and Rural Development regulations.

35. Management Certification. *Form RD 3560-13.* Required for all transfers, each time a management agreement or management plan is executed.

36. Affirmative Fair Housing Marketing Plan. *Form HUD 935.2A.* May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

Proposed Organizational Documents of the Purchaser

37. Purchaser's Organizational Documents. May be omitted for purchasers who are individuals. If the Transferee is an entity that has not yet been formed, draft documents may be submitted. The submission must include all amendments.

- A. Purchaser is a corporation: provide the charter, articles of incorporation and bylaws, or equivalent.
- B. If the Transferee is a non-profit the following should also be submitted.

- Tax-exempt ruling from the IRS conferring 501(c)(3) or 501(c)(4) status.
- List of members on Board of Directors Purchaser is a partnership: provide the partnership agreement.

- C. Purchaser is a partnership: provide the partnership agreement.
- D. Purchaser is a trust: provide the trust agreement.
- E. The documents shall show that the corporation, partnership or trust is authorized to operate the property and to execute and be bound by the Regulatory Agreement.
- F. The documents (or minutes of meetings, as applicable) should establish clearly the authority of the persons executing the Regulatory Agreement and other documents for the Transferee.

38. Attorney Certification. Letter from the purchaser's attorney certifying the legal sufficiency of the organizational documents. The attorney must certify:

- A. The transferee's legal capacity to successfully assume and operate the project for the life of the Rural Development loan.
- B. That the organizational documents comply with the requirements of Paragraph 4.16 B of HF-1-3560 and [7 CFR 3560.55].
- C. For partnership purchasers, that the term of the partnership extends at least through the latest maturity of all existing and proposed Rural Development debt.
- D. For partnership purchasers, that the partnership agreement requires the General Partner(s) to maintain a five percent financial interest in the residual or refinancing proceeds of the partnership.
- E. That the organizational documents required prior written Rural Development approval for any of the following: withdrawal of a general partner/managing member, admission of a general partner/managing member, amending the organizational documents, and selling all or substantially all of the assets of the purchaser.

Other

39. Assurance Agreement. *Form RD 400-4*, Certifying civil rights compliance.

40. Equal Opportunity Agreement. *Form RD 400-1*.

41. Lobbying Certifications (s).

- A. Attachment 7-B-5, MFH Transfer & Assumption Certification for Contracts. Required.
- B. Lobbying Disclosure. *Form SF-LLL*. If applicable.

42. Certification Regarding Drug-Free Workplace Requirements. Either:

- A. *Form AD 1050* (for individual purchasers); or
- B. *Form AD 1049* (for other purchasers).

43. Certification Regarding Collection Policies. *Form RD 1910-11*.

Other

44. (For Projects with HUD Section 8 Housing Assistance Payments (HAP) Contracts).

Applicant should submit a letter from HUD indicating HUD's approval of the Section 8 HAP funding transfer. Formal approval from HUD is a pre-requisite for the closing of the transaction. Purchasers should note that HUD Section 8 rents are adjusted in accordance with HUD procedures and that generally, no rent adjustment should be expected in conjunction with the transfer.

45. Request for Rental Assistance. *Form RD 3560-25.* If Rental Assistance is being requested.

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