



RE/MAX NEW DIMENSION

A PLAIN-ENGLISH GUIDE FOR EXECUTORS & PERSONAL  
REPRESENTATIVES

# The Probate Home Selling Guide

Everything you need to understand before you sell real estate that belongs to an estate — written for people doing this for the first time, in plain English, with no legal jargon.

# You've been asked to handle something you've probably never done before.

If you're reading this, someone named you to handle their estate — and part of that estate is a house. That's a real responsibility, and it's normal for it to feel unfamiliar.

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This guide exists for one reason: to give you a plain-English explanation of how selling a home works inside a California probate, before you're standing in the middle of it trying to figure it out in real time.

You will not find legal advice in these pages. Probate law is specific to your case, your county, and the exact terms of the Letters the court issued you — and only your attorney can advise you on those specifics. What you will find is a working knowledge of the process: the vocabulary, the steps, the decisions that come up, and the mistakes that cost estates money and time. Enough that when your attorney or your agent explains something, you already have the framework to understand it.

A few things worth saying up front. You are not expected to know this already — almost no one does until they're doing it. You are not required to make every decision alone — you have an attorney for the legal steps and, when you're ready, a real estate agent who specializes in probate for the property itself. And you are not on a deadline to read this cover to cover tonight. Use the table of contents, find what applies to your situation right now, and come back for the rest as you need it.

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## HOW TO USE THIS GUIDE

Read Sections 2–3 first for the vocabulary and the big-picture timeline. After that, skip to whatever section matches the decision in front of you — the sections are written to stand on their own.

## The words you'll hear, translated

You'll hear these terms from your attorney, the court, and your real estate agent. Here's what each one actually means.

### Personal Representative

The person the court appoints to manage the estate — called an **Executor** if named in a will, or an **Administrator** if there was no will. This is you.

### Letters

The court document proving you have legal authority to act for the estate — "Letters Testamentary" (with a will) or "Letters of Administration" (without one). Banks, title companies, and buyers will ask to see these.

### IAEA Independent Administration of Estates Act

The California law that lets a Personal Representative handle most estate business — including selling real estate — without a judge approving every step. Most probates operate under it.

### Full Authority

The broadest version of IAEA power. You can sell the home without a court hearing, after giving written notice to the heirs. Covered in Section 5.

### Limited Authority

A narrower version of IAEA power. Selling real estate requires a court hearing and formal confirmation before the sale is final. Covered in Section 5.

### Probate Referee

A person appointed by the court to formally appraise the estate's non-cash assets, including the house. Not the same as your agent's market analysis. Covered in Section 6.

### Inventory and Appraisal Form DE-160

The court filing listing everything the estate owns, with the probate referee's appraised value attached to each asset.

### Decedent

The legal term for the person who passed away and owned the estate.

### Notice of Proposed Action NOPA • Form DE-165

A written notice a Full Authority Personal Representative sends to heirs before selling the home, starting a 15-day waiting period. Covered in Section 13.

### Petition for Confirmation of Sale

The court filing a Limited Authority Personal Representative must make after accepting an offer, asking the judge to approve the sale at a hearing.

### Overbid

A higher bid made in open court at a confirmation hearing. Anyone can show up and outbid your accepted offer by a legally set minimum amount. Covered in Section 14.

### Order Confirming Sale Form DE-265

The judge's signed order finalizing a court-confirmed sale, issued after the confirmation hearing.

### Heir / Beneficiary / Devisee

The people entitled to inherit from the estate — by will (devisee/beneficiary) or by state law if there's no will (heir). You owe them a duty to manage the estate properly.

### Fiduciary Duty

Your legal obligation to act in the estate's best interest — not your own, and not any one heir's. It's the standard everything else in this guide gets measured against.

### Distribution

Transferring what's left of the estate — including sale proceeds — to the heirs, once debts, taxes, and expenses are paid.

### Close of Probate

The court's final act closing the case, after distribution is complete and a final accounting is approved.

## Where the sale fits in the probate timeline

A full probate typically runs 9–18 months in California, sometimes longer. The home sale usually happens in the middle of that timeline, not at the end — here's the general order of events.

- 1 Passing & Will Located** Week 1–2  
Family determines whether a will exists and who it names as executor.
- 2 Petition Filed with the Court** Weeks 2–4  
An attorney files to open probate and formally nominate the Personal Representative.
- 3 Hearing & Letters Issued** ~6–8 weeks in  
The judge appoints you and the court issues your Letters — your legal authority begins here.
- 4 Referee Appraises the Home** Months 1–4  
The court-appointed probate referee values the property for the Inventory and Appraisal (DE-160), due within 4 months of Letters.
- 5 Home is Listed & Sold** Any time after Letters  
Often the biggest asset sale in the estate. Can begin as soon as your Letters are issued — it does not have to wait for probate to finish. See Section 4.
- 6 NOPA or Court Confirmation** 15–45+ days  
Depending on your authority type, either a 15-day notice period runs, or the sale goes before a judge with possible overbidding. See Sections 13–14.
- 7 Escrow Closes** 30–45 days after acceptance  
Title transfers and net proceeds are deposited into the estate account.
- 8 Distribution & Close of Probate** Final step  
Once debts and taxes are settled, remaining funds — including sale proceeds — are distributed and the case closes.

## Can the house be sold before probate is over? Yes — usually it has to be.

One of the most common misconceptions is that the house has to sit until the whole case closes. In most California probates, it's the opposite: the sale is one of the steps that lets the case close.

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Once the court issues your Letters, you generally have the legal authority to list and sell estate real property — you don't wait for probate to "finish" first. In fact, many estates can't finish probate until the house sells, because the sale is what generates the cash to pay debts, taxes, and expenses before what's left can be distributed to the heirs.

Two things do need to be in place before you list:

- **Your Letters must be issued.** Until the court appoints you and issues Letters, you don't yet have legal authority to act for the estate — that includes signing a listing agreement.
- **You need to know your authority type.** Whether you can complete a sale on your own (Full Authority) or need court confirmation first (Limited Authority) changes your timeline significantly. That's the whole subject of the next section.

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### THE PRACTICAL TAKEAWAY

Don't wait for "permission" to start. Once your Letters are in hand, get the house appraised, get it prepped, and talk to a probate-experienced agent about your authority type. Waiting costs the estate money in holding costs — taxes, insurance, utilities, upkeep — every month the house sits.

## Full Authority vs. Limited Authority — the single biggest factor in your timeline

Your Letters will state which kind of authority the court granted you under the Independent Administration of Estates Act (IAEA). This one detail determines whether selling the house takes weeks or an extra month and a half.

### **F** Full Authority

You can accept an offer and close escrow without a court hearing. The only extra step is sending a **Notice of Proposed Action** to the heirs at least 15 days before the sale — if no one objects, you proceed like a typical sale.

**Typical added time:** ~15 days, and it can often overlap with your escrow period rather than extend it.

See Section 13 for how the notice works.

### **L** Limited Authority

After you accept an offer, your attorney must petition the court to confirm the sale. A hearing is scheduled, and at that hearing, other buyers are legally allowed to outbid your accepted offer in open court.

**Typical added time:** 30–45+ days from accepted offer to confirmed sale, and your buyer can be outbid at the hearing.

See Section 14 for how confirmation hearings work.

### CONFIRM THIS BEFORE YOU DO ANYTHING ELSE

Don't assume — read your Letters or ask your attorney directly which authority you have. It affects how you price the home, how you write the listing, and how you set expectations with buyers from day one.

## Who is the probate referee, and why does their appraisal matter?

Separate from anything your real estate agent tells you about market value, the court assigns an independent appraiser — the probate referee — to formally value the estate's property.

Every California county has probate referees appointed by the State Controller's office. Once your case is opened, one is assigned to your estate. Their job is to appraise the non-cash assets — real estate included — for the **Inventory and Appraisal (Form DE-160)**, which must generally be filed within four months of your Letters being issued.

### Why it exists

It gives the court and the heirs an independent, third-party value for estate assets — not one supplied by the Personal Representative or their agent.

### Where it matters most

If you have Limited Authority, the court generally won't confirm a sale price below 90% of the referee's appraised value. It sets a real floor.

### AN APPRAISAL IS NOT A LIST PRICE

The referee's number is a statutory valuation, often built from public records and comparable sales — it's not the same exercise as an agent's current market analysis, and it doesn't account for condition the way a buyer's offer will. Don't be surprised if the two numbers differ. Your agent's job is to translate between them.

## So what's the house actually worth? Three numbers, not one.

Sellers outside of probate usually deal with one number: market value. In a probate sale, you're working with three, and each one plays a different role.

1

### Referee's Appraised Value

The statutory value filed with the court on the DE-160. Matters most for Limited Authority sales, where it sets the court's minimum acceptable price.

2

### Market Value (CMA)

What a licensed agent determines the home will actually sell for today, based on recent comparable sales, condition, and current buyer demand. This sets your list price.

3

### Accepted Offer Price

What a real buyer, with real financing, actually agrees to pay after seeing the property. In Limited Authority sales, this can still move higher through overbidding.

#### WHY THE GAP MATTERS

If the referee's appraisal is stale — based on records from before deferred maintenance piled up, for example — it can create a mismatch between what the court expects and what buyers are actually willing to pay for the home's real condition. Flag this early with your attorney and your agent rather than after you're already in escrow.

## Should the estate fix it up, or sell it as-is?

This is usually the single biggest financial decision you'll make on the sale — and the one where you'll hear the most conflicting advice.

Here's the plain truth: **don't spend estate money simply because a Realtor says everything needs updating.** That advice is common, it's sometimes self-serving, and it's often wrong for a probate sale specifically. You have a fiduciary duty to the estate, which means every dollar spent on the house should be justified by a real return — not a general sense that a fresher kitchen "shows better."

A few things worth knowing before you decide:

- **Estate cash is usually limited.** Most of the estate's value is tied up in the house itself. Spending on repairs before the sale means fronting money the estate may not have easily available, or asking heirs to advance it.
- **Cosmetic work rarely returns dollar-for-dollar.** A repaint or new flooring can help a home show better, but it's the exception, not the rule, that it adds more to the sale price than it costs.
- **Health, safety, and code issues are a different category.** A roof actively leaking, exposed electrical, or a broken furnace can scare off financed buyers entirely and are usually worth addressing, or at least disclosing and pricing around.
- **Probate buyers expect some deferred maintenance.** Investors and many owner-occupants who target probate and estate listings already factor in some wear and tear — you're not selling to a buyer who expects a model home.

### BEFORE YOU APPROVE ANY REPAIR

Get an actual bid from a licensed contractor, not a verbal estimate from whoever's in the house that day. Compare that number to what your agent believes it adds to the sale price. If it's close or negative, sell as-is.

### THE AS-IS MATH THAT MATTERS

Add up the repair cost *and* the extra weeks it delays listing — more property tax, insurance, and utilities paid by the estate. Compare that total against the discount an as-is buyer would expect. Often, they're closer than people assume.

## What happens to everything inside the house?

The furniture, belongings, and personal effects inside the home are a separate matter from the real estate itself — and they usually need to be dealt with before the house can be properly shown.

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Personal property is part of the estate too, which means the same fiduciary duty applies: you can't simply give things away or discard items of value without some record of what happened to them, especially if there's more than one heir.

In practice, most estates handle it one of a few ways:

- **Family division.** Heirs agree in writing on who takes what — the simplest path when everyone's on the same page, and worth documenting even informally to avoid disputes later.
- **Estate sale or auction.** A professional estate sale company sells the contents and remits proceeds to the estate, useful when there's a full household to clear and limited family bandwidth to sort it.
- **Donation.** For items with little resale value, donating to a charity that provides a receipt keeps a paper trail while clearing the home efficiently.
- **Disposal.** What's left after the above — worth photographing before it's hauled away, again for your own records.

### PLAN FOR THIS EARLIER THAN YOU THINK

Clearing out a lifetime of belongings almost always takes longer than families expect, and a house full of personal items is hard to photograph and show well. Build this into your timeline before you set a list date, not after your agent asks why the listing keeps getting pushed back.

## Someone is still living in the house. Now what?

It's common — a surviving spouse, an adult child, a tenant — and it complicates a sale in ways that are worth getting ahead of early.

Your duty as Personal Representative runs to the whole estate, not just to the person living in the home, even if that person is a close family member. That doesn't mean the situation has to be adversarial — most of the time it isn't — but it does mean the arrangement needs to be clear and, ideally, in writing.

### What to settle early

A move-out timeline that works with your listing date, whether the occupant pays fair rental value to the estate while staying, and how showings and photos will happen with someone living there.

### If it gets difficult

If an occupant won't cooperate or won't leave, this becomes a legal matter, not a real estate one — loop your attorney in early rather than letting it stall the listing indefinitely.

### PUT IT IN WRITING

Even a simple written agreement — a move-out date, an understanding about showings — prevents the kind of misunderstanding that turns into a family dispute later. It protects the occupant too, by making expectations clear on both sides.

## If the house sits empty, it needs active protection — not just a locked door.

A vacant home is exposed in ways an occupied one isn't. Most of these are simple to handle, but only if someone is actually staying on top of them.

- ☐ **Call the insurance carrier.** Standard homeowner policies often limit or exclude coverage once a home sits vacant past 30–60 days — a vacant-home policy or rider usually needs to be put in place.
- ☐ **Keep utilities on.** Power, water, and gas prevent frozen pipes, mold, and a home that looks obviously empty from the street.
- ☐ **Rekey the locks.** You don't know how many keys are floating around from the decedent's life — treat it as a fresh start.
- ☐ **Forward the mail.** A stuffed mailbox is one of the clearest signals to the street that a house is unattended.
- ☐ **Keep the exterior maintained.** Mowed grass and a tidy front yard do double duty — curb appeal for the eventual sale, and a visual cue that the property is being watched.
- ☐ **Add an alarm system or cameras.** Inexpensive, and a real deterrent for a home sitting empty for months.
- ☐ **Schedule regular check-ins.** Weekly drive-bys or a professional vacant-property check service catch small problems — a leak, a break-in attempt — before they become expensive ones.
- ☐ **Address pools, pests, and HOA rules.** Each is a small task on its own, but each is also the kind of thing that turns into a fine or a bigger repair if ignored for months.

### YOU DON'T NEED TO FLY OUT HERE EVERY TIME SOMETHING NEEDS TO HAPPEN

This is exactly where a probate-experienced local agent earns their keep for an out-of-state executor — coordinating vendors, doing the check-ins, and being the local point of contact so you're not managing a house 2,000 miles away by yourself. More on this in Section 17.

## If there's still a mortgage, probate doesn't pause it.

The loan doesn't know the borrower passed away. Payments generally need to keep being made, or the property is at real risk of foreclosure while probate is still open.

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A few situations come up often enough to flag directly:

- **Regular mortgage.** The estate (or an heir willing to advance funds) typically needs to keep making payments through the sale. Falling behind during probate is one of the more common — and most preventable — ways estates lose value.
- **Reverse mortgage.** These become due upon the borrower's death. If you're selling rather than keeping the home, heirs typically get an initial six-month window, and servicers can grant additional extensions — often in three-month increments, up to about a year total — if you're actively working toward a sale. Contact the loan servicer immediately after Letters are issued and get any extension in writing; don't wait for a notice to arrive.
- **Underwater or near-underwater properties.** A short sale layered on top of probate procedure is more complex, since it needs both lender approval and IAEA/court compliance. This needs your attorney and an agent experienced in both short sales and probate working together.

### ONE MORE THING WORTH KNOWING

A sale to an outside buyer resets the property's assessed value to the sale price regardless of Proposition 19 — Prop 19's rules are about what happens if an heir keeps the home as their own residence instead of selling it, not about the sale itself. If any heir is weighing keeping the property rather than selling, that decision has its own tax timeline and should go to a CPA or attorney before it's made, not after.

## The Notice of Proposed Action, explained

If you have Full Authority, this is the one procedural step standing between an accepted offer and a closed sale.

Before completing the sale, you send a **Notice of Proposed Action (Form DE-165)** to everyone entitled to notice — typically the heirs and beneficiaries. It spells out the material terms of the sale: the price, the buyer, and the basic terms of the deal.

### The clock

Recipients have at least **15 days** from mailing to object in writing. If no one objects, you can proceed with the sale without a court hearing.

### If someone objects

You may need to seek the court's approval instead, similar to a Limited Authority sale. Your attorney handles the response either way.

### TIME THIS WITH YOUR ESCROW, NOT AGAINST IT

A common scheduling mistake is opening a 30-day escrow as if the notice period doesn't exist. Talk to your attorney about sending the notice as early as possible — ideally before or the moment you accept an offer — so the 15 days runs alongside escrow instead of extending it.

## Court confirmation: what actually happens at the hearing

This is the process that catches people off guard the most, so it's worth understanding in full before you're in the middle of it.

- 1 You accept an offer.** Your attorney files a Petition for Confirmation of Sale (Report of Sale) with the probate court.
- 2 A hearing date is set.** Notice goes out to interested parties. Depending on the county's court calendar — some, including Riverside and San Bernardino, have run significantly backlogged — this can take several weeks to schedule.
- 3 Overbidding can happen in open court.** Any qualified buyer can show up at the hearing and outbid your accepted offer — the minimum overbid is set by statute (Probate Code §10311): at least 10% more on the first \$10,000 of the accepted offer, plus 5% more on the amount above that. If someone overbids, the sale goes to them, on the spot.
- 4 The judge signs the Order Confirming Sale (Form DE-265).** Escrow closes shortly after. Total added time versus a standard sale: typically 30–45+ days.

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### PREPARE YOUR BUYER FOR THIS UPFRONT

Tell buyers and their agents it's a court-confirmation sale before they write the offer, not after. A buyer who understands the process going in is far less likely to walk when they hear "someone could outbid you at the hearing" for the first time.

## Handling offers when "accepted" doesn't always mean final

In a Limited Authority sale, the offer you accept is really the opening bid for a court hearing — which changes how you and your agent should evaluate it.

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- **Prioritize strong, qualified buyers.** A long court-confirmation timeline is hard on financed buyers — rate locks expire, life happens. Cash buyers or those with strong, verified pre-approval carry less risk of falling apart mid-process.
  - **Ask for proof of funds or pre-approval up front.** Standard practice in any sale, but it matters more here given the extended timeline.
  - **Keep backup offers active when you have Limited Authority.** If your buyer gets overbid at the hearing, you want a qualified second buyer ready rather than starting over.
  - **Set expectations with every party early.** Buyers, their agents, and your own family should all understand the realistic timeline before anyone gets attached to a closing date.
  - **Your attorney reviews and signs off.** As Personal Representative, you're the one accepting the offer, but the paperwork and process should run through your attorney, especially for anything headed to a confirmation hearing.

## What actually reaches the estate: a sample net sheet

The sale price and the amount that lands in the estate account are two different numbers. Here's what typically sits between them, illustrated on a sample \$500,000 sale — ask for a real net sheet on your property before you rely on any of these figures.

| LINE ITEM                                                  | SAMPLE AMOUNT                                                |
|------------------------------------------------------------|--------------------------------------------------------------|
| Sale price                                                 | \$500,000                                                    |
| Real estate commission (negotiated, both sides)            | – \$25,000                                                   |
| County & city transfer tax                                 | – \$550                                                      |
| Title & escrow fees                                        | – \$2,800                                                    |
| Natural hazard disclosure report                           | – \$150                                                      |
| Prorated property taxes                                    | – \$900                                                      |
| Probate referee fee (statutory, based on appraised assets) | – \$600                                                      |
| Payoff of existing mortgage or liens, if any               | – varies                                                     |
| Negotiated repair credits, if any                          | – varies                                                     |
| <b>Estimated net to estate</b>                             | <b>\$469,000</b><br>before any loan payoff or repair credits |

### TWO PROBATE-SPECIFIC COSTS TO BUDGET FOR

The probate referee's fee and any court filing costs for a confirmation petition are small relative to the sale price, but they're easy to forget when you're estimating what the estate will actually net. Ask your agent for a full net sheet, using your actual figures, before you set expectations with the heirs.

## You don't need to fly out here every time something needs to happen at the house.

A large share of the Personal Representatives I work with live in another state, sometimes another country. Distance doesn't have to mean you're managing this blind, or constantly on a plane.

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Here's what that actually looks like in practice:

### **Your eyes on the property**

Regular photo and video walkthroughs, so you can see the actual condition of the house without being there — before repairs, during prep, and once it's listed.

### **A local vendor network**

Locksmith, cleanout crew, handyman, landscaper, inspector — coordinated and scheduled on your behalf, so a single repair doesn't require you to find and vet a contractor from 2,000 miles away.

### **Paperwork that doesn't require a flight**

Disclosures, listing agreements, and offer paperwork handled through secure e-signature, so you're never asked to be physically present just to sign something.

### **One point of contact**

I work directly with your probate attorney on timeline items, so you're not the one fielding calls from neighbors, the HOA, or the insurance company on top of everything else.

## Mistakes that cost estates real time and money

Most of these aren't complicated to avoid — they just have to be known about ahead of time.

- ☐ Waiting weeks or months to insure and secure a vacant property.
- ☐ Spending estate money on repairs before getting an honest cost-versus-return opinion.
- ☐ Listing the house before confirming Full or Limited Authority with the attorney.
- ☐ Trying to list before personal property is cleared or agreements are reached with heirs.
- ☐ Letting an occupancy situation go unaddressed until it becomes a dispute.
- ☐ Hiring an agent unfamiliar with probate timelines, NOPA, or confirmation hearings.
- ☐ Not preparing a buyer for a court-confirmation sale before they write an offer — and losing them when they find out mid-escrow.
- ☐ Leaving heirs in the dark, which invites objections that could have been avoided with early communication.
- ☐ Letting the mortgage or insurance lapse while focused on other estate matters.
- ☐ Estimating net proceeds without accounting for the referee fee and court costs.

## Questions worth asking before you hire a probate Realtor

This isn't a standard listing. The agent you choose should be able to answer these clearly and specifically — not in general terms.

**How many probate sales have you actually closed?**

**Do you hold a probate or trust specialist designation?**

**Can you explain how Full vs. Limited Authority changes my timeline?**

**Do you work directly with the probate attorney, or only with me?**

**What's your process for a Personal Representative who lives out of state?**

**Can you coordinate repairs or a cleanout without me being on-site?**

**How do you decide between repairing and selling as-is?**

**What happens to my buyer if the sale gets overbid at confirmation?**

**Will you give me a written net sheet before I make a decision?**

**Can I speak with a past probate client of yours?**

## The practical checklist, start to finish

### RIGHT AFTER APPOINTMENT

- ☐ Confirm Full or Limited Authority with your attorney
- ☐ Secure the property & rekey the locks
- ☐ Call the insurer about vacant-property coverage
- ☐ Keep utilities on and mail forwarded

### BEFORE YOU LIST

- ☐ Resolve any occupancy situation in writing
- ☐ Clear or arrange for personal property
- ☐ Get a contractor bid before approving repairs
- ☐ Get a written net sheet from your agent

### LISTING & OFFERS

- ☐ Hire an agent with real probate transaction experience
- ☐ Set a realistic, evidence-based list price
- ☐ Prepare buyers for NOPA or confirmation upfront

### UNDER CONTRACT

- ☐ Track the 15-day NOPA window, or the confirmation hearing date
- ☐ Keep a qualified backup offer active if Limited Authority
- ☐ Keep mortgage & insurance payments current through closing

### CLOSING

- ☐ Coordinate final steps with your attorney and escrow
- ☐ Confirm proceeds are recorded for the estate accounting

## ABOUT THE AUTHOR

# Matthew McGilvray

**Certified Probate & Trust Specialist (CPTS) · RE/MAX New Dimension**

I specialize in real estate sales inside probate and trust administration across Southern California, working with Personal Representatives, executors, and trustees — including many who live out of state and are managing an estate property from a distance.

My job is to make the real estate side of this as straightforward as possible: pricing the property honestly, coordinating with your attorney on timing, managing the property itself when you can't be there, and giving you clear, written numbers before you have to make a decision. No pressure, no manufactured urgency — just a plain explanation of what's in front of you and what I'd do in your position.

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