South Dakota Real Estate Commission
2011 Fall Caravan

“Fair Housing & RESPA”
6 Hours Required; 6 Hours Postlicensing Period 1 -Ethics & Professional Liability
Registration Fee: Early Bird $60 postmarked no later than Tuesday, Oct. 25; $70 After Oct. 25 and on-site

Long Road Home—Fair Housing Through the Eyes of Real People — You’ve never been on a Fair Housing Journey
This! These are the stories and insights from real people involved in fair housing issues. You’ll meet P.J. Dixon as he
shares his home buying experience from a wheelchair, the real stories of single mothers and some personal insights into
his history that many of us overlooked. This is a new, innovative and fresh look at fair housing issues. Real people with
stories, just trying to get home.

Skillful Relationships—How to Build Business Relationships That Leverage the Power of RESPA—Building powerful
relationships, networks and aligning with ancillary service providers is critical to the success of your business. What does
it take to build powerful settlement service provider relationships that can benefit you and bring you more clients?
How do we have to be aware of in crafting those relationships? What provisions of the Real Estate Settlement and
Service Act can we leverage to maximize the return on our investment? This class will open your eyes to whole new
ds of possibilities.

*Instructors—Theresa Barnabei and Len Elder, Course Creators, LLC

Instruction: 8:15 a.m.; Course: 9 a.m.—4 p.m.
Monday, Nov. 7—Sioux Falls Ramkota
Wednesday, Nov. 2—Pierre Ramkota
Tuesday, Nov. 8—Sioux Falls Ramkota
Thursday, Nov. 3—Rapid City Ramkota
Wednesday, Nov. 9—Watertown Ramkota
Friday, Nov. 4—Spearfish Holiday Inn
Thursday, Nov. 10—Aberdeen Ramkota

Registration Form on Back Page
I hope you have had an enjoyable summer and for those of you who experienced the flooding issues and summer storms, I wish you pleasant days ahead.

Soon licensees who need to renew this year will receive their renewal information. In addition, all active licensees who carry errors and omissions insurance from Rice Insurance Services Company will receive those notices, as well. A new option this year is the online renewal process. Please check to make sure that you have all your education completed and recorded with our office.

For those licensees renewing, the renewal and fee must be received by the Commission no later than November 30. Renewals received after that date will be returned for a late fee. To expedite the renewals of those licensees who wish to be on active status January 1st, proof of renewal of errors and omissions insurance must accompany the license renewal form. In addition, I strongly advise those licensees to have their continuing or postlicensing education completed by November 30th, as well. By submitting a complete renewal packet and satisfying the education requirements by the renewal deadline, the licensee is assured of receiving the 2012-13 licenses before January 1.

Brokers — please check with your associates who are renewing to make sure everything is in place for their renewals to meet the November 30th deadline.

As we are now part of the Department of Labor “family”, our website is being updated and given a fresh new look to reflect our new home. We think you will like the changes!

I’d like to thank the South Dakota Association of REALTORS® for the excellent conference. The speakers were excellent.

Don’t forget to register for the Fall Caravan. It’s coming up soon!

Autumn is such a beautiful time of the year. I hope you take some time to enjoy it. Have a wonderful Thanksgiving.

It is important to note the scope of property management activities includes not only typical apartment-type rentals, but also vacation rentals and listed homes that are being rented out until they are sold. Persons engaged in any of these activities are subject to licensing requirements of the SDREC. (People managing property they own may do so without a license).

So what happens when a broker associate wants to conduct property management separately from their brokerage firm? Another company/entity must be established and the associate must either become a Responsible Broker for that entity OR become licensed as a Property Manager.

Property management involves more bookkeeping and paperwork than any other area of real estate practice. Broker associates and/or Responsible Brokers considering managing property should give serious consideration to the requirements and issues that are unique to this industry. Most importantly, do your homework. Not only do the licensing regulation relating to accounting of trust funds and records need to be considered but also liability concerns, maintenance issues, improper or negligent management, landlord/tenant laws, equal housing laws, tax and insurance requirements, labor and payroll matters, and many other very important issues.

PROPERTY MANAGEMENT

Property Management has become a popular “sideline” activity for broker associates in addition to the traditional listing/selling services offered to clients.

It is extremely important that licensees are aware of and are complying with the laws and rules pertaining to property management. This article is designed to address issues regarding broker associates managing property owned by others.

It is permissible to manage property with a broker associate license; however, all property management activities must be conducted under the umbrella of the brokerage firm with which the licensee is associated.

There must be a written management agreement between the property owner and the brokerage firm. Security/pet/damage deposit and rent money must be kept in the brokerage firm’s trust account. All other trust account requirements for property management apply as well.

The Responsible Broker must supervise the agent’s property management activity and may also be held accountable for their actions.
License Renewal Information

The leaves are changing and falling from the trees, a sure sign of... license renewal season!

Each year, many renewals are returned and/or delayed because one or more of the requirements are not met. Here is a list of the most common problem areas that may result in a delay in renewal:

Unsigned or Incomplete Renewal Form - Unsigned forms will be returned as well as those with questions left unanswered. It is important to note that for questions that require a yes/no answer, writing “N/A” is NOT an acceptable.

Incorrect Fees – the renewal fee may be combined with the E&O insurance premium into one check, but make sure the amount is correct. If not, the check along with the renewal forms will be returned. Also, if an entire office is combining E&O premiums and/or renewal fees into a single check and the amount does not total correctly, the entire group of renewals will be returned.

Satellite/Branch Offices – there is a $30 fee to renew each additional license hanging in satellite or branch offices. This is often overlooked. If an individual and/or firm is doing business in more than one physical location, there must be a license at each location.

E&O Endorsements for Other States – if you have a license in another state and are purchasing an insurance endorsement for that state, don’t wait until the last minute to renew your E&O! It takes time for the SDREC office to notify the insurance company of the endorsements and in turn, for the insurance company to notify the appropriate state(s) of the coverage.

Late Renewals – Renewals are due in the SDREC office no later than November 30. This is not a postmark deadline. Renewals received after Nov. 30 will be returned for a late fee.

Education – Waiting until the last minute to complete education is not a good idea. It is recommended that licensees have their hours completed by the renewal deadline of Nov. 30. For those completing their hours in December, the SDREC office cannot guarantee you will have an active license in hand on January 1. Education providers have 10 days to report completion information once a licensee has taken a course. Don’t take a course at the last minute expecting it to be reported immediately.

Nonresident Certification of Licensure - Residents of other states who hold SD licenses are reminded that a Certificate of Licensure from their home state must be submitted with the renewal form. Contact the regulatory agency in your home state to request this document.

Inactive Licenses – If you are due to renew your license this year and are on inactive status, you still must renew the license, otherwise you will become unlicensed.

Mailing Address – For active licensees, renewal and E&O Insurance notices are mailed to the brokerage firm’s office address. For inactive licensees, the renewal is mailed to the last home address on file with the SDREC.

CHECK YOUR MAIL! – Correspondence from the SDREC office is mailed to licensees at the brokerage firm address. If the SDREC office must return the renewal for any reason, it is important that the licensee pay attention to his/her office mail. Every year, many licensees are unaware their renewals have been returned simply because they are not checking their office mail regularly. Not sure when you need to renew? LOOK at your license OR log on to the “Licensees Only” section on the SDREC website. If your renewal year says “2011” – you renew this year.

SDREC Instructor Development Workshop

Real estate instructors and those interested in being instructors are invited to attend SDREC’s Instructor Development Workshop (IDW) scheduled for Nov. 1 in Pierre.

This year’s workshop facilitators are Theresa Barnabei and Len Elder of Course Creators, LLC.

Theresa & Len will present "The Cutting Edge - Techniques & Technology for Today’s Educator". From the authors of the national book, Question - How to Present like a Pro, comes a course designed for today’s educators. Know what other instructors are doing to make the classroom meaningful and relevant to students. Explore and master the cutting edge technology and techniques that can help you differentiate yourself and make your classes and yourself more memorable to your students.

The workshop will begin at 8 a.m. on Tuesday, Nov. 1 and conclude at 5 p.m. at the Governors Inn in Pierre. There is no cost to attend, other than traveling expenses. Persons considering instructing prelicensing courses must complete an IDW within one year of approval as a prelicensing instructor.

For more information, contact Karen Callahan, Education Director at (605) 773-3600 or email karen.callahan@state.sd.us.

2011 Fall Caravan and Instructor Workshop

Featured Speakers

Len Elder, J.D., B.A., DREI – Course Creators, LLC

Educational classes and events should leave students excited, energized, inspired and knowledgeable. Len has a B.A. degree in Speech Communications and a Juris Doctorate in Law. He was a nationally recognized intercollegiate debate award winner and was the Speech Forensics Debate Coach for Capital University. He is the youngest recipient ever of the John J. Getsey Memorial Award for Academic Excellence and Achievement in the practice of law. As an attorney, Len was undefeated in court of appeals proceedings and in arbitration hearings. The National Real Estate Educators Association (REEA) has recognized Len as a Distinguished Real Estate Instructor (DREI). He has been published as the author of law journal articles, cover stories for the National Real Estate Educators Association Journal and his books titled, “UnRandom Thoughts” and “A Treasonous Season” are published on Amazon.com.
Having 30 years in the business world, the last 16 devoted to real estate, Theresa brings a wealth of knowledge, experience and practical advice to every presentation. She mastered real estate investing, REALTOR® sales and then management of a 150 agent office, by applying the success techniques learned from her career at United Parcel Service. She willingly shares her business and real estate savvy in every course she creates and presents. She is recognized as one of the most inspirational speakers in her field, focused on causing students to take action to make a difference in their own lives. Theresa’s passion for real estate has caused her to be a presenter on behalf of the research and marketing department of NAR at two national conferences, for the Real Estate Educators Association, and for associations and brokers throughout the country.

License Renewal Available Online

Online renewal is now available for individual licensees who renew this year as well as all licensees who purchase the group E&O insurance policy.

To use the system, licensees will log in to the SDREC website (www.sdrec.sd.gov) with their user name, which is their last name and last four digits of their social security number and password. The default password is the licensee’s entire social security number. Licensees will have an option to change their passwords to something other than their social security numbers.

In order for a licensee to use the online system to renew a license on active status, the licensee’s education must be completed and recorded with the SDREC office. If all of the education necessary to renew the license on active status has not been posted to the licensee’s education report, the online system will not allow the licensee to proceed with the active renewal. Licenses may be renewed on an inactive status.

Due to the volume of people using the online system, the SDREC advises licensees not to wait until the last hour of the day on November 30 to renew, in case there are technical issues related to the high volume of users. This will NOT be an excuse and a late fee will be charged if the renewal is received after Nov. 30.

New Licensees

The South Dakota Real Estate Commission would like to welcome the following new licensees.

Broker
Odenbach, Scott J – Spearfish
Schumann, Dale A – Fairmont, MN
Takacs, Jr., Joseph A – Oviedo, FL

Broker Associate
Ballard, Steven T – Sioux Falls
Dykes, Bradley C – Yankton
Hegerfeld, Laura – Elkton
Hough, Morgan M – Brookings
Kawanesicayuga, Kaileen – Rapid City
Kleinsasser, Reginald J – Huron
Lewis, Michael E – Rapid City
Malenke, Dustin – Tea
Nepodal, Elizabeth A – Platte
Sieler, Christy H – Sioux Falls
Svartoien, Caleb P - Brookings

Property Manager
Sneesby, Dana M - Spearfish

Home Inspector
Thompson, Bradley J - Mitchell

Residential Rental Agent
Nickels, Traci – Fort Pierre
Rabine, Patricia S – Sioux Falls

Salesperson
Booth, Clyde K – Miami, OK
Effertz, Neil M – Bismarck, ND
Harvey, Jerry L – Keytesville, MO

Timeshare Agent
Maude, Jaqueline R – Hermosa
Romero-Douglas, Elaine – Rapid City

Case Law Highlight: Missouri Supreme Court Upholds Injunction Against Unlicensed Internet Rental Locator

(Used with permission from ARELLO)

The Missouri Supreme Court has affirmed the ongoing legal efforts of the Missouri Real Estate Commission (MREC) to enjoin the unlicensed activities of an Internet rental location company. The company unsuccessfully asserted that its activities were exempt from the state's licensing requirements and that the licensing laws violated both the U.S. and Missouri Constitutions.
According to the Missouri Supreme Court decision in Kansas City Premier Apartments, Inc. v. Missouri Real Estate Commission, the company (KCPA) helped owners of rental properties to locate prospective tenants. KCPA operated a searchable database of rental listings provided by property owners and provided prospects with access to rental advisors who responded to the prospects' questions, recommended properties and arranged appointments with owners. Through "non-exclusive performance-based agreements", property owners agreed to pay a fee to KCPA for each new referred tenant. KCPA also offered a $100 gift card to each prospect whose referral resulted in an owner's payment to KCPA.

After it received a complaint regarding KCPA, MREC sent a letter in December 2006 advising the company that its unlicensed real estate activities were unlawful, followed by a March 2007 "cease and desist" letter. KCPA filed suit against MREC, arguing that it was exempt from licensure and asserting the unconstitutionality of Missouri's real estate licensing laws. After two years of litigation, MREC brought its own suit for a preliminary injunction to stop KCPA's unlicensed activities. A trial-level state circuit court issued an injunction prohibiting KCPA from "contracting with property owners to receive compensation in return for referring prospective tenants" and from performing any act requiring a real estate license. It also prohibited KCPA from dispensing rebate [gift] cards to tenants.

KCPA appealed the decision to the Missouri Supreme Court.

On appeal, KCPA first argued that it was exempt from licensure under Missouri Revised Statutes section 339.010.7(5) which states that, "Any person employed or retained to manage real property by, for, or on behalf of the agent or the owner of any real estate shall be exempt from holding a [real estate] license." However, the exemption is limited to several specified activities, such as "[c]onveying [of] information prepared by a broker or owner about a rental unit, a lease, an application for lease . . . by any person." The Court ruled that KCPA's activities were not sufficiently limited to qualify for that, or any other, statutory exemption to the state's licensing requirements. The court reasoned that, although KCPA did "convey information prepared by an owner", it provided other services such as providing access to rental advisors who marketed select units to prospects based on their particular needs and gave advice about apartment search strategies.

KCPA also argued that the applicable provisions of Missouri's real estate licensing laws should be struck down because they "...dramatically impair the ability of unlicensed persons to share knowledge about real estate and limit the ability of potential renters to receive this knowledge...", thus violating the free speech guarantees of the U.S. and Missouri Constitutions. The Court rejected the argument, ruling that regulation of professions is necessary to protect the public and, therefore, is not unconstitutional simply because the free speech rights of unlicensed persons are incidentally affected. The Court noted that, if KCPA merely wanted to advertise or provide information, it would be exempt from regulation. But, the Supreme Court noted, the circuit court found that KCPA "crossed over the line" into activities requiring a license.

The Court determined that Missouri's real estate licensing laws regulate a form of commercial speech to which constitutional "intermediate scrutiny" applies. Under that analysis, the Court ruled that the licensing laws directly advance Missouri's interest in ensuring honest and competent real estate practices and that the statutes extend only as far as is necessary to protect that interest. Consequently, the Court ruled that the challenged license laws do not violate notions of protected commercial speech.

The court also rejected KCPA's argument that Missouri's license law exemptions are unconstitutionally discriminatory because they are "not based on differences reasonably related to the purposes" of licensing statutes. The Court analyzed the exemptions, which it grouped into four categories: persons acting on their own behalf; attorneys; those with independent legal authority to deal in land transactions such as receivers and executors; and advertising entities. The court ruled that the exemptions have a reasonably conceivable rational basis and do not violate constitutional principals of equal protection under the law.

Mission—Purpose—Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the
activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

**Appraiser Certification Program Advisory Council**

Council members provide recommendations to the Secretary of the Department of Labor and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. [www.state.sd.us/appraisers](http://www.state.sd.us/appraisers)

**New Licensees – August/September 2011**

- Chris R. Jenkins, State-Registered – West Des Moines, IA
- Dane R. Anderson, State-Certified General – West Des Moines, IA
- Corey D. Hunhoff, State-Registered – Yankton, SD
- Kyle M. Sexe, State-Registered – Sioux Falls, SD
- Joe P. Holler, State-Registered – Sioux Falls, SD
- Adam L. Nelson, State-Registered – Sioux Falls, SD
- Sheila R. Jensen, State-Certified General – San Diego, CA
- Richard E. Sobczak, State-Certified General – Omaha, NE
- Anthony D. Guth, State-Certified General – Chicago, IL
- Daniel P. McCoy, State-Certified General – Fort Collins, CO
- David J. Tonsfeldt, State-Certified General – Hiawatha, IA

**Information Regarding Disciplinary Actions**

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Labor and Regulation, Appraiser Certification Program, 445 East Capitol Ave., Pierre, SD 57501 or e-mail – Sherry.Bren@state.sd.us. Include in the request for information the name of the appraiser and the appraiser’s city and state of residence. (Disciplinary action may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))

The following disciplinary action has been taken by the Department of Labor and Regulation, Appraiser Certification Program:

**Michael D. Burns, Rapid City, SD – Complaint Case # 10-369.** The Dept. of Labor and Regulation entered into a Consent Agreement suspending the State-Certified Residential Appraiser Certificate of Michael D. Burns commencing 09/16/11 through 09/30/11 and assessed a $600 penalty for violations of ARSD 20:14:06:01 (violation of Uniform Standards of Professional Appraisal Practice, Standard 1 and 2).

**Anonymous Complaints**

ARSD 20:14:11:01.01. Anonymous complaints. Initiation of an investigation may be commenced upon receipt of an anonymous complaint if it meets the following criteria:

1. The allegations of violations of any provision of this article are considered credible and based upon factual information which is independently verifiable; and
2. The complaint is accompanied by a copy of the appraisal report or other documents which contain clearly identifiable errors or violations of the provisions of this article.

**Review of Cases – 01/01/11 through 09/26/11**

For the period 01/01/11 through 09/26/11, the Department has received four upgrade applications and initiated 14 complaint investigations.

Upgrades – Three upgrades issued and one upgrade pending.

Complaints – One complaint dismissed, one temporary permit application withdrawn and twelve complaints pending.

**Upgrades – 08/05/11 through 09/26/11**

Jay Knuppe, State-Certified General Thomas Young, State-Certified General

**Appraisal Management Companies To be Registered and Supervised in South Dakota**

Effective July 1, 2011, any person or entity acting as an appraisal management company or performing appraisal management services in this state, with limited exceptions, shall register with the Department of Labor and Regulation. The statutes regarding registration and supervision of Appraisal Management Companies may be found on the Appraiser Certification Program Website [www.state.sd.us/appraisers](http://www.state.sd.us/appraisers).

**Maintaining an Education File**

The Department recommends that each appraiser registered, licensed or certified by the Appraiser Certification Program maintain an “education” file of appraisal course attendance verification for courses taken to renew the appraiser certificate. It is much easier to maintain the “education” file than to contact education providers for the documents to renew the certificate.

**Statutory Provisions Affecting State Appraiser Regulatory Programs**

On March 18, 2011 the Appraisal Subcommittee issued a Bulletin (No. 2011-01) to the State Appraiser Regulatory Officials to provide information on compliance with certain provisions in the Dodd-Frank Wall Street Reform and

The provision affecting the South Dakota Appraiser Certification Program concerns mandatory Appraiser Qualifications Board (AQB) Criteria for credentialing of State licensed appraisers (licensed appraisers). Specifically, the requirement that only AQB-compliant appraisers are eligible to perform appraisals for federally related transactions (FRTs).

Pursuant to the Bulletin issued by the ASC, as of July 1, 2013, in order for a licensed appraiser (state-licensed appraiser in South Dakota) to be eligible to perform appraisals for FRTs, that individual must satisfy requirements for licensing in a State whose criteria meet or exceed AQB Criteria. Therefore, any State issuing State license credential must adopt or implement the relevant AQB Criteria. The ASC will begin monitoring States for compliance with the provision on July 1, 2013. As of that date, licensed level appraisers will be maintained on the National Registry as follows:

1. **AQB-compliant licensed appraisers** – Licensed appraiser listed as AQB-compliant will remain on the National Registry, and their current status will not be affected.

2. **Non AQB-compliant licensed appraisers** – Licensed appraisers listed as non AQB-compliant will remain on the National Registry; however, their status will be changed to “inactive” (ineligible to perform appraisals for FRTs). Non AQB-compliant appraisers will not be added to the National Registry after July 1, 2013, as they will no longer be eligible to perform appraisals for FRTs.

Currently, South Dakota complies with the AQB Criteria except in the area of the minimum number of hours of experience an applicant must verify in order to be licensed as, or upgrade to, the state-licensed appraiser classification. According to ARSD 20:14:05:03 an applicant for state-licensed appraiser must have a minimum of 1,000 hours of appraisal experience. The AQB Criteria requires a minimum of 2,000 hours of appraisal experience.

The Appraiser Certification Program will, in the very near future, revise the administrative rules regarding appraisers to require an applicant to verify 2,000 hours of appraisal experience in order to be licensed as, or upgrade to, the state-licensed appraiser classification.

If you have any questions, please feel free to contact the Appraiser Certification Program office at 605.773.4608.

**When Does An Appraisal Assignment End?**

(This article appeared in the Appraisersreport, a Publication of the North Carolina Appraisal Board, and is reprinted here with permission.)

You finish your appraisal report and submit it to your client. The next day you receive an email asking you to add three comps and a current listing. After you send those in, you receive a request for interior photos of the subject. When will it end?

The Board gets calls about this almost daily. The major reason that appraisers get these calls is that they fail to establish their scope of work at the beginning of the assignment. Many appraisers simply look at the fax or email order and start working on the assignment, never asking their clients questions such as how many comps they should use or whether interior photos are required. Another reason is that appraisers generally try to keep their clients happy and will go as far as they can to do so.

The Appraisal board takes the position that an appraisal assignment ends when the assignment conditions have been met and the report is transmitted to the client. After that point, the client may ask for clarification of items in the report, or for an explanation as to why certain information was not provided. The client may also notify the appraiser of errors in the report and ask the appraiser to correct the mistakes. Any other requests, such as use of additional comps, result in a new appraisal assignment. The appraiser is free to charge whatever he or she chooses for this assignment, or may charge no fee at all.

Appraisers are advised that they should have a letter of engagement in the workfile for each assignment that details the scope of work to be performed for each assignment. If the appraisal order does not have sufficient information on it to outline exactly what the client wants, the appraisers should follow up with a fax or email stating exactly what they will do for the assignment. This could include stating the number of comps to be used in the grid, whether a current listing will also be gridded, whether interior photos will be taken or provided in the report, how long they will take to produce the appraisal, etc. Failing to have such a letter may result in a misunderstanding with the client whether the appraiser has completed the assignment as ordered.

NOTE: The Appraisal Board is aware that the Appraisal Standards Board issued a monthly Q&A in December 2007 in which they stated that “Requests to perform additional research or analysis change the scope of work, but do not create a new assignment. The additional work can be performed as part of the original assignment. The appraiser may decide, as a business decision, to treat the request for additional research and analysis as a new assignment, but it is not required.” The concern the Board has is that this Q&A would let an appraisal assignment go on for a long period of time, as there would be no definite end to it. The board believes that appraisers should treat a request for additional research and analysis as a new assignment.

**Reminder for Renewal in 2013 - 7-Hour National USPAP Update Course**

Pursuant to ARSD 20:14:13:01 an applicant for renewal of a certificate or license must successfully complete the most current edition seven-hour National Uniform Standards of Professional Appraisal Practice Update course prior to June 30 of each even-numbered year.

South Dakota state-registered, state-licensed, state-certified residential and state-certified general appraisers must complete the 2012-2013 Edition of the 7-Hour National USPAP Update Course prior to June 30, 2012. (Certified or licensed appraisers by reciprocity should review the administrative rules regarding continuing education requirements for reciprocal appraisers found in ARSD 20:14:13:01(3)).

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