

AGING AND THE LAW SERIES

What Every Professional Needs to Know

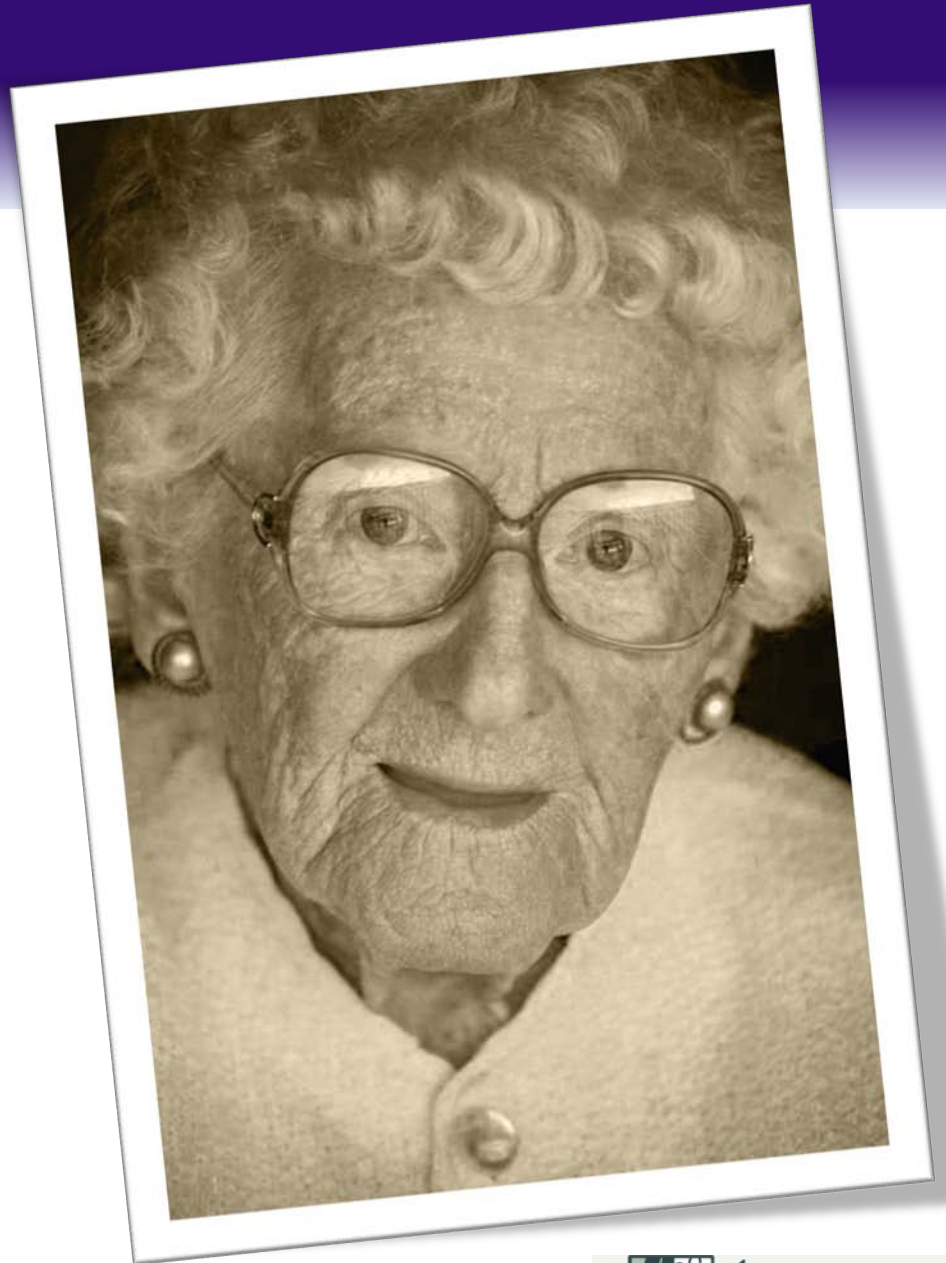
FAMILY FINANCIAL ARRANGEMENTS

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What Motivates?

- Desire to help
- Family Responsibility
- Sense of duty



Motivations

Motivations for lending or guaranteeing funds tend to be support focused, rather than economic focused.



Family Dynamics

In particular, older adults may feel obligated to provide for children or grandchildren in need of financial assistance due to their symbolic role as the head of the family.



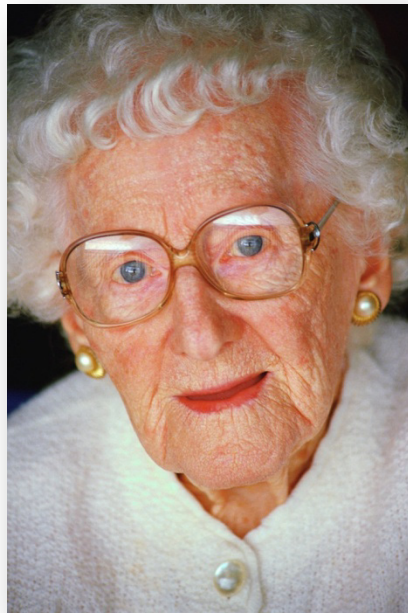
Pressure

Older adults may be pressured into agreeing to financial arrangements out of loyalty, custom, or other circumstances



Family Dynamics

Family dynamics play an important role when distinguishing inter-family financial arrangements from arrangements with third parties (such as lending institutions).



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Family Dynamics



Financial transactions between family members are often informal or vague, as opposed to rigorous and detailed business transactions.

Loans



- A *loan* is the provision of money to another on the agreement that the money will be paid back, with or without interest.
- Loans need to be written down, but non-documentation can interpretation issues if the nature of the transaction is disputed.

Guarantees

A *guarantee* occurs where an individual (the guarantor) assumes responsibility for a loan made to another person (the borrower) if the borrower defaults on his or her repayment.



Committee on Legal Issues Affecting Seniors, "Financial Arrangements Between Older Adults and Family Members : Loans and Guarantees," CCELS Report No. 1, October 2004.

Guarantees

Guarantors are usually used where the borrower has a poor credit rating, which would otherwise prevent the borrower from securing the loan.

Guarantees



In the case of guarantees, guarantors may not read over agreements thoroughly or at all, preferring to trust their borrowing family member.

Mrs. Andrews

- Widow, mid-70s
- Wants to stay in her own home
- Jane and grandchildren living with Mrs. A
- Mrs. A owns her own house and \$50K in bank account for “rainy day”.



Daughter Jane



- Mid 40s, recently divorced
- 3 children
- All living with Mrs. Andrews currently
- Wants to buy her own home
- Can't afford the down payment

Son Steve

- Early 40s
- Never married, no kids
- Applying for a bank loan to finance his new business enterprise
- Bank want a guarantor for the loan



Jane Does Not Repay...

- Jane assumed “no hurry” to repay.
- When she “got back on her feet”... unclear.
- If she didn't get around to repayment, it could be “taken off her inheritance” anyway...no big deal.

Steve Goes under...

- Steve's business does not thrive.
- Mrs. A is responsible for repaying the loan – house is the only asset.
- Lost her home.



What about Mrs. Andrews?

- Lost her \$50,000 to Jane – doesn't know how to get it back or if she can...no money to hire a lawyer...
- Worried Jane will be mad and won't let her see grandkids.
- Lost her home because of Steve's debts.
- Impoverished and homeless.

Why No Document?

Family relations may hinder proper documentation of loans.

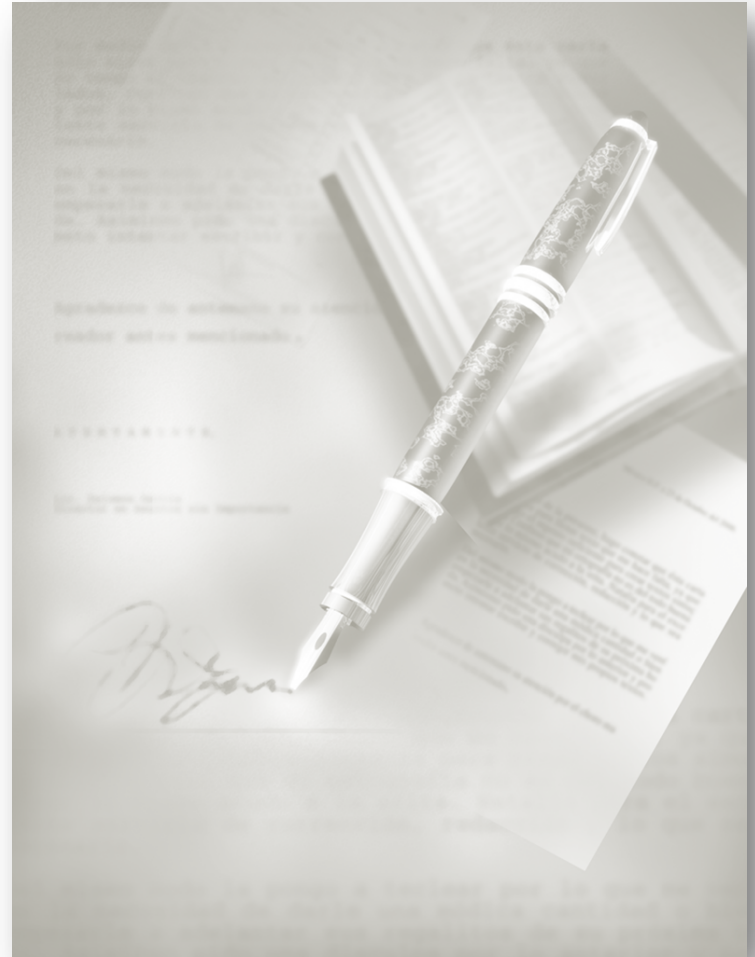
Lenders may feel uncomfortable asking for a written agreement from a family member.



Committee on Legal Issues Affecting Seniors, "Financial Arrangements Between Older Adults and Family Members : Loans and Guarantees," CCELS Report No. 1, October 2004.

Without The Document...

- Express terms of the agreement may not be clear to all parties.
- There is also the potential for shifting interpretations of the terms of the agreement.



Family Loans & Guarantees

Example:

A lender (e.g. a parent) may interpret a transfer of money to a child to be a loan.

The child may interpret the funds to be a gift or an advance inheritance; therefore, repayment is not expected.

Family Loans & Guarantees

Example:

A guarantor may not realize that his or her assets (such as the family home) may be in jeopardy if the borrower defaults.

The borrower may see the guarantor as a mere formality, without realizing the degree of the guarantor's commitment.

Advancement by Portion

*Last Will
of*

Where a parent transfers funds to a child, there is a potential for assumption that the transfer constitutes advancement by portion.

This means that the transfer is a form of early inheritance, to be subtracted from the child's ultimate share of the parent's estate.

Advancement by Portion

Advancements by portion are generally distributed to allow the child to start a business, buy a home, or otherwise establish him or herself.

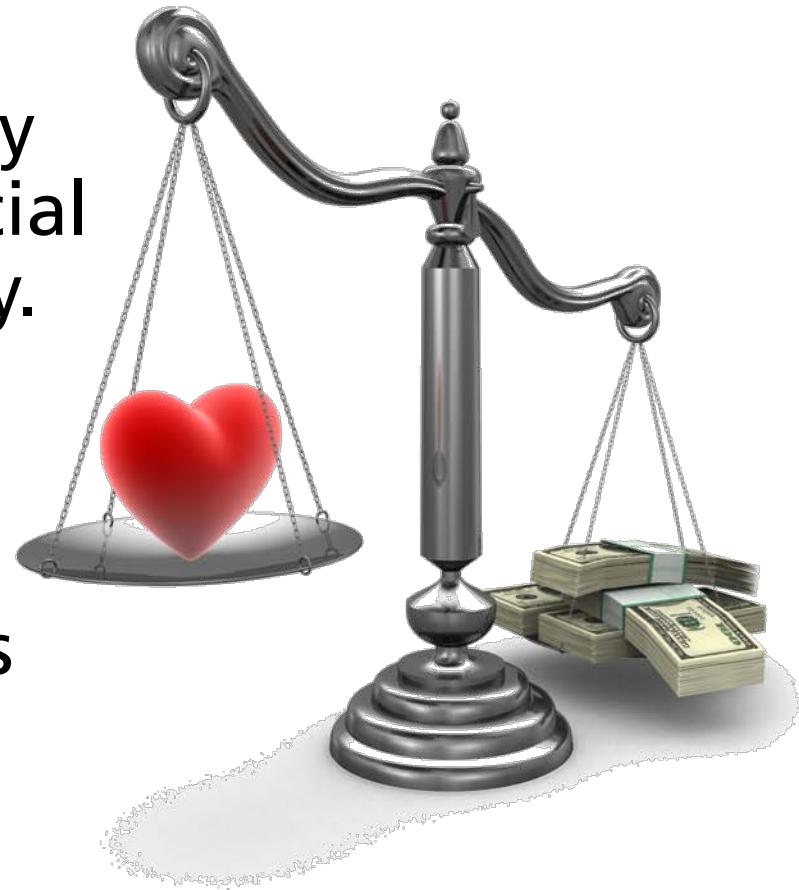


Advancement by Portion

- Improper or lack of documentation can result in transfers that were meant to be loans being translated into gifts when the transferor's will is interpreted.
- Similarly, gifts that are meant to be independent of inheritance may be interpreted as advancements by portion.

Risks for Older Adults

- Older adults are especially likely to enter into financial arrangements with family.
- Their assets (both wealth and credit rating) make them prime candidates as lenders and guarantors.



Risks for Older Adults

The characteristics of inter-generational relationships may put older adults at significant risk for loss or exploitation.



Risks for Older Adults

Older adults are usually less likely to be able to recover from losses in assets such as life savings or homes. As well, older adults tend to avoid taking legal action, particularly against family members.



Risks for Older Adults

While there is nothing inherently risky or abusive about family financial transactions, where the parties to the transaction are not well informed about the implications of the agreement they are entering, there is an increased risk of harm.



Risks for Older Adults



All loans and guarantees present a risk to potential lenders and guarantors.

It is important to note that older adults may be especially vulnerable in family financial transactions for various reasons.

Vulnerability

Sample characteristics of vulnerable older adults :

- Lack of education or information
- Language or cultural barriers
- Cognitive impairments
- Pressure from family members (implied or express)
- Misunderstanding of terms of agreement
- Uncomfortable asking questions about terms of loans



Exploitation

Older adults may be at risk of abuse or exploitation from family members :

- They may be dependent on an adult child for care or other support
- Family members may prey on the vulnerability of an older adult in order to secure loans or guarantees without explaining the true terms and conditions
- Fraud and forgery may occur
- Power of attorney may be abused to secure assets

Client Support & Protection



It is important to consider a client's family situation when advising on financial or testamentary decisions.

Sibling rivalries, favoritism (real or alleged), and maintaining fairness are common issues.

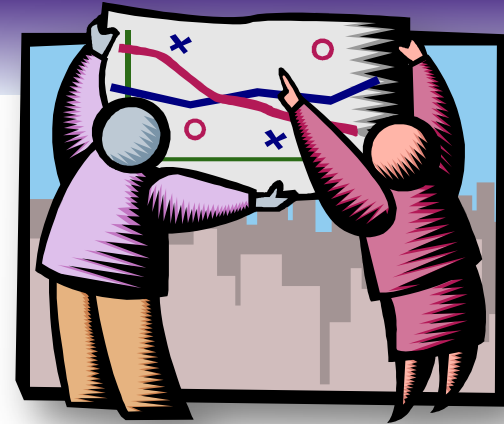
Client Support & Protection

- In all cases, money can be a difficult topic of discussion for clients; for many, it is a very personal subject.
- There may also be inter-generational differences of opinion in this respect, which can complicate the matter further.



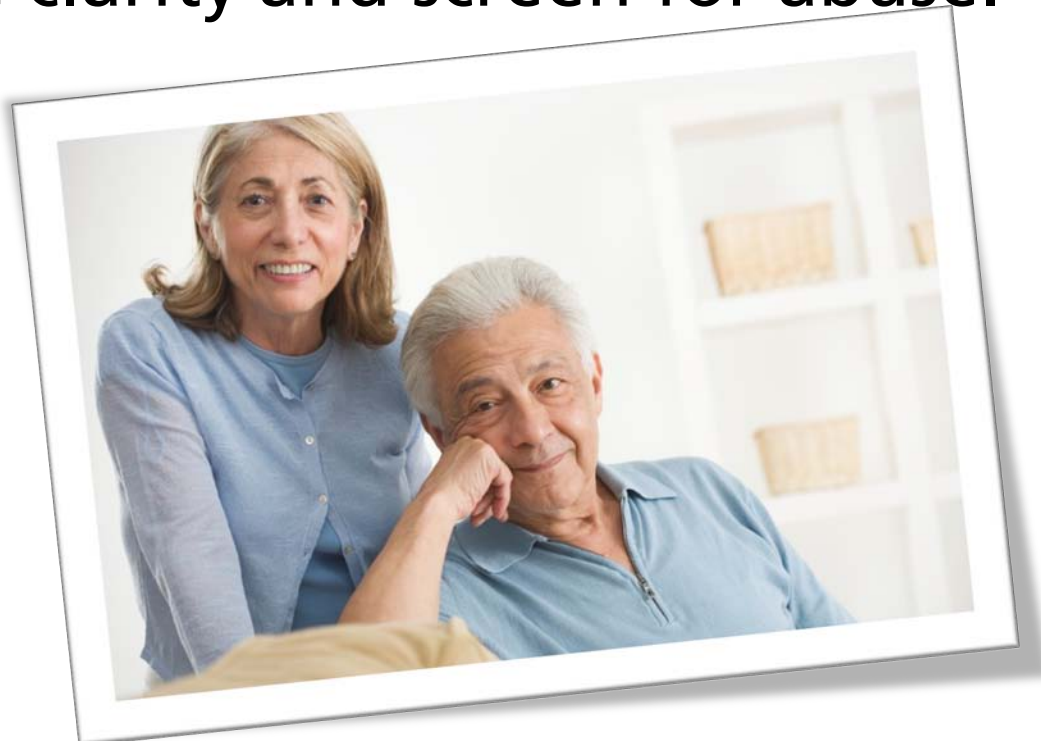
Strategies & Techniques

- Always advise clients to document loans in writing.
- Ensure that clients are well versed in the implications of their financial arrangements, particularly where family members are parties to the transaction.
- Discuss “worst-case scenarios” to create awareness of potential risk (especially where loss of family home is possible).



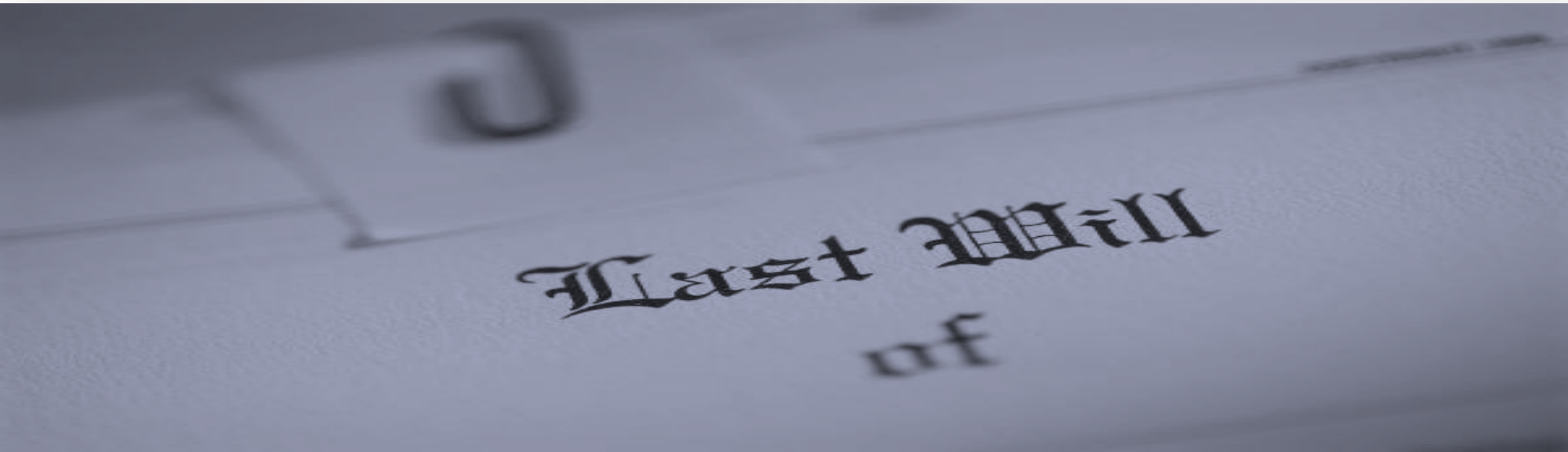
Strategies & Techniques

- Have clients explain back to you what the agreement entails.
- Meet other parties to the arrangement to ensure clarity and screen for abuse.



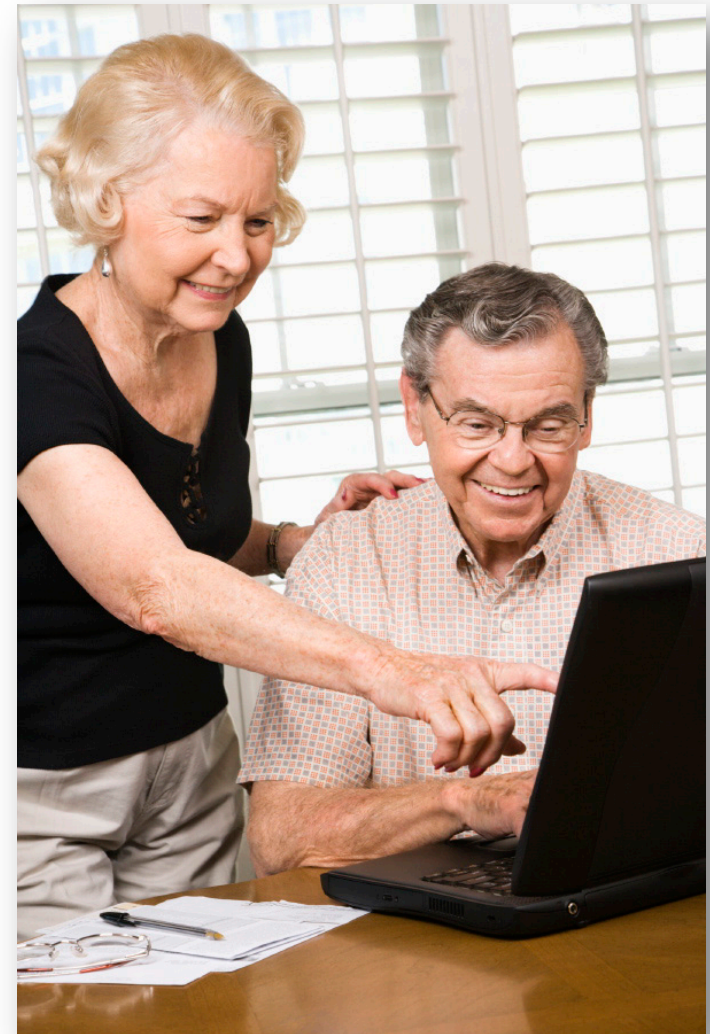
Strategies & Techniques

Advise clients on potential interpretations of their will, such as advancement by portion, which may arise from undocumented loans.



Strategies & Techniques

Watch for signs of incapability, vulnerability, or potential for abuse or exploitation of older lenders and guarantors.



Summary

Additional Resources

For information about how you can become a Certified Professional Consultant on Aging (CPCA) visit us at our website www.agefriendlybusiness.com

For information about the Canadian Centre for Elder Law visit us at our website www.bcli.org

THANK YOU!

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