

# The importance of assistance

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## A good plan guarantees that your wishes will be respected



Taking the time to enjoy the moment and the presence of those we love is a fundamental part of life. However, it is equally important to be aware of potential and future events that can alter our reality. Planning for them will help you get peace of mind and will ensure that your wishes are carried out as intended.

Estate planning is a process by which you are called to make important decisions regarding the disposition of your property upon your passing, so that the liquidation of your succession is carried out without complications for your loved ones and in an organized fashion that is in line with your priorities and wishes. It is therefore important to devote some time to planning

the transfer of your wealth to your heirs. The cornerstone of the process is your will: it is the key to guaranteeing the fair distribution of your wealth in accordance with your objectives, needs and wishes.

The second most important aspect of an estate plan is the protection mandate in anticipation of incapacity which allows you to designate one or several individuals who will see to your well-being and the administration of your assets if you are no longer able to do so. Should this happen, the mandatary to the person will be responsible for making all decisions pertaining to the protection of your moral and physical well-being, while the mandatary to property will see to the diligent and

prudent administration of your wealth. This mandate will allow you to designate these individuals and assign them the powers required to protect you.

Beyond the will and the protection mandate, if you wish to optimize the distribution of your estate, there are other strategies that you may wish to implement. Judicious planning ensures the preservation, distribution and administration of your assets in accordance with your tax situation as well as your personal and financial priorities.

**Would you like to evaluate your estate situation?**

❖ Visit the Estate Planning section of National Bank's website at [nbc.ca/estate](https://www.nbc.ca/estate).

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 Take charge of the transfer of your estate and make sure that it goes to the people of your choosing.  
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## Main steps of a good estate plan

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1. Make an inventory of your property
2. Establish your objectives
3. Provide for your protection and well-being in the event of incapacity
4. Evaluate your options
5. Review your plan regularly
6. Provide for the liquidation of your succession

### 1. Make an inventory of your property

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Making an inventory of your property entails listing all of your assets and liabilities as well as where they reside (bank accounts, credit cards, investments, safety box, insurance policies, retirement plans...). Ask your advisor to provide you with a copy of the inventory of assets form that will help you make a complete list of all your assets.

Furthermore, it is important to consider the repercussions of your matrimonial regime, family patrimony and gifts under a civil union or marriage contract, if applicable, along with their tax consequences at time of death. Doing so will allow you to not only grasp the extent of your net value,

but it will also help you plan properly so as to minimize the tax consequences of transferring your estate.

This inventory should be updated regularly in order to reflect your current financial situation. It is especially crucial in time of an insurance claim, critical illness or accident, disability or death.

### 2. Establish your objectives

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Take some time to determine who would take care of you and your property in the event you are unable, mentally or physically, to express your wishes. Also think about your objectives and priorities upon your passing as well as when and how you wish your estate to be distributed.

### 3. Provide for your protection and well-being in the event of incapacity

There are numerous causes to incapacity, whether temporary or permanent. The *Civil Code of Québec* has provided for several mechanisms to ensure that individuals who can no longer handle their affairs are protected. Once declared, an incapacity prevents a person from fully exercising their civil rights. As long as you are in full possession of your faculties, you can draw up a mandate seeking to protect yourself in the event of incapacity, and therefore avoid having to be subjected to the tutorship and curatorship rules as well as the public Curator supervision.

If you do not have a protection mandate, the *Civil Code of Québec* provides a form of protective supervision (tutorship or curatorship), depending on the degree of the incapacity, and a court procedure must be undertaken.

As previously mentioned, the protection mandate allows you to express your wishes, designate the individual(s) who will see to your moral and physical well-being as well as to the administration of your property if you are unable to do so, and lay down the rules that will need to be observed in managing your person and your wealth. The protection mandate is therefore much more personalized, as it allows you to create a customized plan by taking into consideration your personal situation, needs and interests.

#### National Bank Trust can take care of the administration of your assets in the event of your incapacity

Under a tutorship or curatorship, National Bank Trust can be appointed by the court to act as administrator of the property if your assets exceed \$500,000. When drawing up a protection mandate, you can trust our team of experienced professionals by requesting National Bank Trust to manage your wealth. Furthermore, if you are designated as administrator of someone else's tutorship or curatorship, or are appointed mandatary to another person's property, you can relieve yourself of the complex duties involved in the daily management of the property by allowing National Bank Trust to take on specific tasks and duties regarding the administration. We invite you to discuss this in greater detail with your National Bank advisor.

You can include, for instance, provisions regarding:

- ▶ home and health care;
- ▶ end-of-life treatment;
- ▶ consent to care;
- ▶ the management of your company;
- ▶ how to care for your loved ones;
- ▶ the designation of a tutor for your minor children.

To be enforced, the mandate must be probated by the court once you have received medical and psychological evaluations regarding your incapacity.

It is best to have your mandate notarized to ensure greater security. A notarized protection mandate is difficult to dispute. It will be kept in a safe place by the notary and can easily be traced because it is registered with the *Registres des dispositions testamentaires et des mandats de la Chambre des notaires du Québec*.

It also allows you to gain valuable expert advice regarding the decisions you will have to make in this matter.

#### Duties of the administrator

Whether the administrator is acting in the context of a tutorship, curatorship or a protection mandate in anticipation of incapacity, his or her tasks are numerous and complex, and should therefore not be taken lightly. Furthermore, the administrator is personally liable for his or her actions.

In most cases, tutorship and curatorship require that the administrator report regularly to the public Curator and tutorship council, or provide a guarantee of his or her administration. Rare are the individuals who possess the necessary competencies to adhere to the legal, fiscal and financial provisions pertaining to these responsibilities. Administering a tutorship or curatorship is not an easy task. Entrusting this responsibility to professionals has its benefits. Don't hesitate to ask your advisor for more information about our services.

## 4. Evaluate your options

To reach your objectives in accordance with your financial circumstances, you can consider several ways to protect and distribute your wealth: writing a will, making a living donation or creating a trust to allocate your assets over time. Here's how these instruments can help you:

### The Will

Writing your will and testament can bring you peace of mind and save your loved ones many troubles down the road. It will also ensure that your wealth is distributed to your heirs in accordance with your wishes.

A good estate plan gives you peace of mind.

In Quebec, there are three types of will:

- ▶ holograph;
- ▶ before witnesses; and
- ▶ notarized.

If your will is not notarized, it will have to be probated by the court or a notary at time of death. In return, a notarized will is enforced immediately upon death, without requiring any additional procedures. A notarized will is, without a doubt, a key element of a judicious estate plan. Enlisting the services of a notary to draw up your will provides you with valuable expert advice to ensure that your wishes are clearly expressed. It also brings you an added layer of security, since it will be stored in a safe place and kept confidential, be difficult to contest and be easily traced as it will be registered with the *Registres des dispositions testamentaires et des mandats de la Chambre des notaires du Québec*.

Your will is revocable and can be amended at any time, in part or in full, as often as you wish as long as it is done in accordance with the law. It is therefore useful for testators to periodically review their will to ensure that the dispositions are current and in line with your wishes, namely when there is a change in your personal situation (divorce, birth of a child, etc.).

If you have a marriage or civil union contract, it may contain a testamentary provision pertaining to the rights of the surviving spouse. This allows your spouse to be your residuary heir by universal title at time of death, and it bears the same legal weight as a notarized will. It is also possible to indicate whether you wish to make a donation to your spouse and/or children in your marriage or civil union contract, which would take effect at the time of your death.

When a person dies without a will, the property will be distributed according to the laws of the *Civil Code of Québec*.

## DID YOU KNOW...?

### Less than one out of two Canadians has a will.

A survey conducted by the Angus Reid Forum showed that:

- ▶ 56% Canadians do not have a will;
- ▶ 71% do not have a protection mandate in the event of incapacity; and
- ▶ only 12% of young people between 27 and 34 years of age have a will.

The study revealed that it is often a life-changing event that makes people draw up a will:

- ▶ 30% created a will upon the birth of a child;
- ▶ 20% did so because their marital status changed (32% in Quebec); and
- ▶ 13% because they purchased a home.

Source: [www.jecomprends.ca/famille/separe\\_divorce/moins\\_dun\\_canadien\\_sur\\_deux\\_a\\_un\\_testament](http://www.jecomprends.ca/famille/separe_divorce/moins_dun_canadien_sur_deux_a_un_testament)

- ▶ Common-law partners do not inherit any assets according to the applicable law in an intestate succession.
- ▶ Legally married partners, whether separated de facto or legally, inherit the estate if no will has been provided. Only divorced partners do not inherit anything.
- ▶ Children of your partner do not inherit anything from you, even if you considered them as your own.
- ▶ If the deceased person was divorced and the only legal heirs are his or her children in the first degree that are not of legal age, the surviving parent (ex-partner), as legal tutor to the children, administers the estate that the children inherit.
- ▶ The division of the family patrimony and liquidation of the matrimonial or civil union regime take priority over the legal devolution.

## Who are your legal heirs?

If you die without having made testamentary provisions for your property, the *Civil Code of Québec* will determine who will inherit your assets and in which proportion. Depending on your situation<sup>1</sup>, your property will be divided as follows:

Division of an Intestate Estate (Ab Intestato)				
	Legal spouse <sup>2</sup>	Children <sup>3</sup>	Mother and father	Brothers/sisters and/or nephews/nieces
With a legal spouse	100%	–	–	–
	1/3	2/3		
	2/3	–	1/3	
	2/3	–	–	1/3
Without a legal spouse <sup>4</sup>	–	100%		
	–	–	1/2	1/2
	–	–	–	100%
	–	–	100%	–

Example: The estate of a person without a legal spouse and without child will be divided as follows: 50% to the parents and 50% to brothers and sisters.

- 1 We have listed the main scenarios that are likely to occur. See art. 653 et seq. of the *Civil Code of Québec* for other scenarios.
- 2 Under the *Civil Code of Québec*, the term “spouse” refers only to people who are legally married or in a civil union and does not include common-law spouses, regardless of the number of years they have cohabited or whether they have children together.
- 3 The share of a deceased child reverts to his/her descendants (children or grandchildren).
- 4 There are particular laws that protect common-law spouses. Example: pension funds.

## Trusts

In general, there are many ways to distribute your property. Each depends on whether you wish to distribute it while living or at time of death, and if you want to provide instructions regarding its use. Creating a trust can be a great way to achieve your objectives in this regard.

A trust is a legal instrument by which you transfer part or all of your assets, while living or upon death, to another patrimony that your trustee accepts to hold and administer in accordance with your predetermined objectives.

When you create a trust, whether inter vivos or testamentary, you also create a new autonomous patrimony by appropriation and distinct from your patrimony, and in which neither you nor your beneficiaries or trustees have real rights.

The relevance of a trust depends on your personal and financial circumstances.

An inter vivos trust can be appropriate when, for example, it is a matter of reorganizing your corporate structure, protecting certain types of assets against possible creditors or personal or professional liability lawsuits, or if the assets are to benefit charitable, philanthropic or educational organizations. The trust can be created by contract, judgment or the law. When it is drawn up by contract, it takes effect the moment the document is signed and the acceptance of the trustee.

A testamentary trust, for its part, is very useful if you intend to include several beneficiaries successively, control how your assets are distributed or spread their distribution out over time, protect your beneficiaries and ensure their financial security, or prevent your capital from being quickly squandered. It is created by testament and takes effect upon the testator’s death.

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 Speak with your professional advisor in order to determine whether the creation of a trust is appropriate for your needs and objectives.  
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## The trustee

The trustee – or fiduciary – is at the centre of the trust. In addition to being responsible for managing the assets contained in the trust, the trustee is tasked with overseeing its distribution and administration. When transferring your assets under this management framework, you must ensure that they are administered by a competent trustee.

Because of its many roles, the trustee must possess considerable legal, financial, accounting and tax knowledge.

This individual must adhere to the provisions of the trust deed and all applicable regulations as well as make all decisions to the extent of the powers assigned to him or her. Furthermore, the trustee must act with integrity, caution, diligence, impartiality and objectivity.

In all cases, selecting a trustee is a decision that should not be taken lightly. After all, this person will need to manage and administer your trust. It is therefore important that you choose a person who

not only has the competencies, experience and availability to do so properly and in compliance with the law, but someone who is also honest and loyal.

Creating a trust, whether inter vivos or testamentary, requires a preliminary analysis, customized and conscientious planning, and expert legal and fiscal knowledge in order to properly identify the challenges, potential risks and tax consequences. Prudent individuals should consult professionals before using this tool.

## NATIONAL BANK TRUST CAN LOOK AFTER ADMINISTERING YOUR TRUST

### Administering a trust is a complex undertaking!

Administering a trust is a complex task, which requires a diverse set of skills. National Bank Trust can be designated as trustee of your trust to professionally manage it if the assets exceed \$500,000 or may act as an agent of your trustee to take on specific tasks and duties regarding its administration. By transferring your assets under this framework and ensuring that they are administered by a team of professionals at National Bank Trust, you can enjoy the benefits of active management combined with the strength, discipline and performance of a recognized manager.

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## 5. Review your plan regularly

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Changes in your financial or personal situation, or amendments to laws and regulations can have consequences on your planning strategies. It can therefore be useful to occasionally revise your documents to ensure that they are up to date and that they continue to reflect your wishes.

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A good succession strategy ensures the efficient transfer of your estate.

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## 6. Provide for the liquidation of your estate

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Liquidating an estate is a long, complex and delicate process that too often entails intricate legal, administrative and fiscal matters, and requires great availability. The *Civil Code of Québec* imposes numerous rules and formalities that should be respected in order to minimize risk exposure and avoid compromising the rights of heirs. The liquidator (sometimes also referred to as *estate executor* or *administrator*) can be viewed as the estate liquidation's conductor, having to make the right calls and take the required steps to ensure your wishes are carried out adequately.

In Quebec, the liquidator is normally designated by the testator (deceased) in his or her will. In the absence of a will or in the event that the testator has not designated

a liquidator, the law provides for all heirs to act as liquidators, as one entity. They can designate a liquidator by majority vote, which could be one or several of them together, or they can name an individual who is not a legatee. To do so, legal counsel is highly recommended.

The person designated as liquidator by the testator can choose to accept or renounce the responsibility at any time. In such a case, he or she will be substituted by the replacement liquidator provided for in the will. If the will does not provide for a replacement or if the replacement liquidator also renounces the responsibility, the heirs can then designate a liquidator, by a majority of votes, or if this is not possible, the court may do so in their place.

The powers and duties of a liquidator are outlined in the *Civil Code of Québec*, but the testator can customize them in the will, as necessary.

# Have you been appointed as an estate liquidator?

Have you been designated as liquidator of an estate? When given such a manifest show of trust, you may want to take charge of the responsibilities laid upon you. However, it's important that you first understand your obligations and, most of all, where to even begin!

The duties and responsibilities of a liquidator can vary, namely depending on the size, complexity and location of the estate, the will's provisions, the location of the deceased's last residence and the heir's current residence. Do not hesitate to refer to the liquidator's checklist at the end of this document, which presents a summary of the tasks that you will have to undertake in order to properly carry out your responsibilities.

## We can assist you

Our main objective is to support estate liquidator in this process so that the deceased's assets can be distributed diligently and smoothly in compliance with his or her wishes and the applicable laws. But we can also do a lot more.

### Asset release and assistance services\*

An advisor can be designated to give the estate liquidator valuable assistance, especially when it comes to releasing the deceased's assets and carrying out certain specific liquidation duties. The goal is make the process easier for the liquidator. The advisor will be available to give the liquidator guidance, help retrieve the relevant documents and generally reduce the complexity of these tasks. To assist in this way, we offer two types of packages:

#### Estate Assistance Package

- ▶ With the help of a designated intermediary, the liquidator will be able to:
  - consolidate the assets held in other financial institutions
  - obtain the death certificate from the *Directeur de l'état civil*
  - submit requests for will searches to the *Registres des dispositions testamentaires et des mandats de la Chambre des notaires du Québec* and the *Registres des testaments et mandats du Barreau du Québec*

Other services can be included in the package. Please ask your advisor for details.

#### Will Verification (probate) Package

- ▶ A holograph or witnessed will needs to be probated by the court. To facilitate this process, your advisor can submit the petition for probate to a notary who will take the necessary steps to confirm the validity of the will and allow the liquidator to continue with the liquidation of the estate.

#### National Bank Trust's complete mandate

National Bank Trust can be designated in your will as sole or co-liquidator of your estate with one or more of your relatives. On the other hand, if you have been appointed liquidator of an estate and seek to obtain some guidance or assistance, you can entrust this complex responsibility to National Bank Trust's team of experts who will undertake specific tasks and duties associated with the daily management and administration. You would then benefit from the active management of our professionals and the skill, discipline and performance of a recognized manager in the trust services industry.

The complete mandate encompasses all the duties that are imposed upon the liquidator and allows you to get the support of a highly specialized team of experts. It is a premium service rooted in a privileged business relationship.

\* Similar services are also offered by National Bank Financial as well as Private Wealth 1859. Do not hesitate to contact your advisor for more information.



## In conclusion

Estate planning requires time and careful consideration, but it is a testimony to your vigilance and care for your loved ones. It is important to be well supported in this process. Together, we will review the situation and find the solutions that are right for you. In partnership with you or with your family, we will ensure that you benefit from the ongoing support of an active, multidisciplinary team that will oversee the administration of your and your loved one's assets and investments. When choosing National Bank Trust, you can count on a partner who knows the ins and outs of fiduciary responsibilities.

### The advantages of doing business with National Bank Trust

- ✘ Offers a centralized turnkey service and highly personalized, discreet customer service
- ✘ Assumes the responsibility of administrative and legal formalities
- ✘ Prevents conflicts for complex family situations or when distribution is subject to disputes, and reduces tensions
- ✘ Maximizes tax benefits
- ✘ Provides a framework for all steps of the estate distribution, when applicable
- ✘ Guarantees availability, continuity and follow-ups throughout the administration process
- ✘ Optimizes solutions in the best interest of beneficiaries
- ✘ Helps the administrator or co-administrator in the decision-making process
- ✘ Saves time and energy for the administrator or co-administrator
- ✘ Offers greater efficiency, quick handling of tasks and a rigorous and ordered process
- ✘ Provides the benefit of an expert, multidisciplinary team of professionals (notaries, lawyers, accountants, tax and investment advisors, and portfolio managers)

# Liquidator's checklist

Preliminary steps	
<input type="checkbox"/>	Obtain the proof of death
<input type="checkbox"/>	Obtain the testamentary researches from the <i>Registres des dispositions testamentaires et des mandats de la Chambre des notaires du Québec</i> and the <i>Registres des testaments et mandats du Barreau du Québec</i>
<input type="checkbox"/>	Retrieve the will and the marriage contract
<input type="checkbox"/>	Review and analyze the testamentary dispositions
<input type="checkbox"/>	Obtain a declaration of heirship if the individual died without a will
<input type="checkbox"/>	Determine or designate the liquidator
<input type="checkbox"/>	Register the liquidator with the <i>Registre des droits personnels et réels mobiliers</i> (RDPRM)
<input type="checkbox"/>	Have the will probated, if it is not notarized
<input type="checkbox"/>	Collect information and documents (birth certificate, judgement of divorce judgement or legal separation, deed of donation, estate renunciation, etc.)
<input type="checkbox"/>	Make an inventory of the safety box
<input type="checkbox"/>	Contact the financial institutions concerned

Short-term steps	
<input type="checkbox"/>	Validate the information and conduct a detailed analysis of the different documents
<input type="checkbox"/>	Open a bank account in the estate's name
<input type="checkbox"/>	Protect and preserve the property
<input type="checkbox"/>	Store valuables in a safe place
<input type="checkbox"/>	Verify group and individual life insurance coverage as well as property and automobile insurance
<input type="checkbox"/>	Custodial safeguarding
<input type="checkbox"/>	See to the publication of notices
<input type="checkbox"/>	Proceed with various authorizations and change of address
<input type="checkbox"/>	Submit a notice to creditors and intermediaries (financial institutions, life insurance company, employer, <i>Régie des rentes du Québec</i> , Old Age Security, Equifax and Trans-Union, etc.)
<input type="checkbox"/>	Cancel services (residential lease, public utilities, personal and credit cards, Internet, phone service, cable, magazine subscriptions, driver's license, social insurance, etc.) and social media accounts (Twitter, Facebook, Instagram, LinkedIn, YouTube, MySpace, Google+, etc.)
<input type="checkbox"/>	Search for successors and legatees
<input type="checkbox"/>	Explain the will and estate liquidation process to successors and legatees
<input type="checkbox"/>	Analyze the deceased's financial situation
<input type="checkbox"/>	Identify the estate property and prepare a preliminary inventory
<input type="checkbox"/>	Confirm the matrimonial regime as well as the acceptance or renunciation to the family patrimony

Mid-term steps	
<input type="checkbox"/>	Repatriate and manage assets
<input type="checkbox"/>	Collect income (interest, leases, receivables, etc.)
<input type="checkbox"/>	Claim pensions, registered retirement plans (RRSP, Stock Savings Plan, RPP, RRIF) and life insurance policies with no designated beneficiary
<input type="checkbox"/>	Analyze portfolios and liquidities
<input type="checkbox"/>	Draft an asset management policy
<input type="checkbox"/>	Evaluate movable and immovable assets
<input type="checkbox"/>	Evaluate the estate's assets and liabilities
<input type="checkbox"/>	Analyze the legal and fiscal actions to undertake
<input type="checkbox"/>	Analyze the consequences of the family patrimony, of the matrimonial regime, of the compensatory allowance and of the obligation of support
<input type="checkbox"/>	Administer the estate's assets
<input type="checkbox"/>	Maintain operations for the deceased's businesses and management companies (if applicable)
<input type="checkbox"/>	Pay urgent debts (according to the solvency of the estate)
<input type="checkbox"/>	Communicate with successors, legatees and intermediaries
<input type="checkbox"/>	Request the certificate authorizing the partial distribution of assets from the provincial government

Long-term steps	
<input type="checkbox"/>	Proceed to the partition of the family patrimony and matrimonial regime, if applicable
<input type="checkbox"/>	Identify the choices to be made regarding the sale of certain assets
<input type="checkbox"/>	Register the assets in the name of the estate and produce the declaration of transmission
<input type="checkbox"/>	Update the accounting, finalize the estate inventory and publish a notice of closure of inventory
<input type="checkbox"/>	Communicate with successors, legatees and intermediaries
<input type="checkbox"/>	Obtain successors' and legatees' decision regarding the acceptance or renunciation to their legacy (right of option)
<input type="checkbox"/>	Analyze tax consequences and recommendations
<input type="checkbox"/>	Pay the debts and legacies by particular title and partially distribute assets to the heirs
<input type="checkbox"/>	Transfer registered retirement accounts (RRSP, Stock Savings Plan, RPP, RRIF)
<input type="checkbox"/>	Prepare annual financial statements and/or annual rendering of account
<input type="checkbox"/>	File income taxes and pay taxes (T-1 and TP-1; T-3 and TP-646)
<input type="checkbox"/>	Receive the notices of assessment from the federal and provincial governments
<input type="checkbox"/>	Provide the tax forms to legatees
<input type="checkbox"/>	Request clearance certificates authorizing the final distribution of assets (federal and provincial governments)
<input type="checkbox"/>	Produce the final account and prepare a proposal for the distribution of assets
<input type="checkbox"/>	Obtain discharges from the heirs and distribute the assets to them
<input type="checkbox"/>	Publish the <i>avis de clôture de compte</i> (closure of the account notice) in the <i>Registre des droits personnels et réels mobiliers</i> (RDPRM)
<input type="checkbox"/>	Close the estate's account
<input type="checkbox"/>	Create a trust, if applicable, and transfer the assets as intended





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Should you have any questions, do not hesitate to contact us.

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