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RSNL1990 CHAPTER L-10

**LEASEHOLDS IN ST. JOHN 'S ACT**

Amended:

1992 c38 s1; 1994 c27; 1995 c32; 2013 c16 s25

**CHAPTER L-10**

**AN ACT RESPECTING CERTAIN LEASEHOLD  
INTERESTS WITHIN THE CITY OF ST. JOHN 'S**

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### Short title

1. This Act may be cited as the *Leaseholds in St. John's Act*.

1977 c94 s1

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### Interpretation

2. (1) In this Act
  - (a) "ancient lease" means a lease of land within the city that was made before August 2, 1921 and includes an extension of an original lease whether the extension is expressed to be an extension or not of that original lease;
  - (b) "arbitrator" means an arbitrator appointed under subsection 13(1);
  - (c) "building" includes a structure, erection, excavation, alteration or improvement on land but does not include a mobile home or trailer;
  - (d) "city" means the City of St. John's as described in the *City of St. John's Act*;
  - (e) "commercial use" means a use in connection with a trade, business, profession, manufacture or other venture for profit but does not include
    - (i) the use of one's own residence to provide board or lodging for reward,
    - (ii) the use of a building by the council of the city as residential premises, or
    - (iii) the use of a building that is leased to a tenant as a residential premises so as to constitute a relationship of landlord and tenant as set out in the *Residential Tenancies Act*;
  - (f) "lessee" includes the assigns of the lessee;
  - (g) "lessor" includes the assigns of the lessor;
  - (h) "modern lease" means a lease of vacant land within the city that was made after August 1, 1921, and before June 1, 1977 on which land the lessee or his or her assign covenants to erect a building or to pull down an old building and erect another building, and includes an extension of an original lease whether the extension is expressed to be an extension or not of that original lease; and
  - (i) "residential arbitrator" means an arbitrator appointed under subsection 13(2).

(2) The expression "within the city" refers to the boundaries of the city as they exist on the date this Part comes into force.

(3) Where during the whole of the 3 month period beginning on March 1, 1977, a lessee both lived in and carried on a trade, business, profession, manufacture or other venture for profit from the premises having a common address and on land held under an ancient lease, that lease of land shall be considered not to be occupied for a commercial use within the meaning of this Act.

(3.1) A lease of land within the city that was made after August 1, 1921 and before June 1, 1977 is, in the absence of evidence to the contrary, presumed to be a modern lease.

(4) [Rep. by 1994 c27 s2]

(5) Notwithstanding paragraph (1)(a), land on which a lessee erected a building before a lease with respect to the land was entered into shall be considered to be vacant land for the purposes of this Act.

1977 c94 s2; 1983 c44 s1; 1986 c34 s1; 1988 c44 s42(3); [1994 c27 s2](#); [1995 c32 s1](#)

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### City to acquire freehold

**2.1** (1) After the commencement of this section all the right, title and interest of a lessor in any land subject to an ancient or a modern lease not in commercial use within the city, including

- (a) land on which a dwelling house is located that is held in part under an ancient lease and in part under a modern lease; or
- (b) land held under a lease entered into before June 1, 1977 that is used by the lessee for a purpose associated with his or her residence in the dwelling house,

shall vest in the city.

(2) The city shall compensate a lessor in

- (a) an amount of money equal to 40 times the annual rent for an ancient lease; or
- (b) an amount of money equal to 20 times the annual rent for a modern lease; and
- (c) an amount of money for arrears of annual rent not to exceed 10 years of arrears.

(3) Before the city compensates a lessor for the title to land under subsection (2), the lessor shall give the city

- (a) particulars of his or her estate and interest in the land;
- (b) title deeds, plans and other documents in his or her possession or available to him or her relating to the title to the land; and
- (c) other information that the city requests in connection with the land, the title to the land and his or her interest in it or in connection with his or her claim.

(4) Nothing contained in this Act shall be considered to require the city to make or arrange for the payment of compensation until the time that the lessor has established his or her title to the reasonable satisfaction of the city.

[1994 c27 s3](#); [1995 c32 s2](#)

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### Modern lease

3. Notwithstanding a clause or condition to the contrary in the lease, a modern lease of land is subject to a condition that the lessee may during the currency of the lease purchase the freehold in the land upon payment to the lessor or to the city of an amount of money equal to 20 times the amount of the annual rental payable for the land under the modern lease.

1977 c94 s3; [1994 c27 s3](#)

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### Ancient lease in residential use

4. (1) Notwithstanding a clause or a condition to the contrary in the lease, an ancient lease of land not being occupied for a commercial use is subject to a condition that the lessee may during the currency of the lease purchase the freehold in the land upon payment to the lessor of an amount of money equal to 40 times the amount of the annual rental payable for the land under the ancient lease.

(2) Where in the year in which its use is being determined or in the immediately preceding year land has been occupied for a commercial use, that land is being occupied for a commercial use for the purposes of this Act in respect of an ancient lease.

(3) An extension of a lease under paragraph (1)(b) does not preclude the lessee from exercising his or her right under paragraph (1)(a) during the currency of an extended lease.

1977 c94 s4; [1994 c27 s4](#); [1995 c32 s3](#)

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### Lease considered renewed

5. (1) A person in occupation or possession of land other than for a commercial use on June 1, 1977 whose ancient or modern lease with respect to that land expired before or after that date and who continues to occupy or possess the land other than for a commercial use on December 21, 1983, or the assigns of that person, is considered to have had the lease extended until December 31, 1995 and upon payment of arrears of rent that person or the assigns of that person may exercise the rights granted under this Act.

(1.1) Notwithstanding subsection (1), a lease under subsection (1) shall be considered to be extended until the later of December 31, 1995 or until the lessee acquires the freehold interest in the lease from the city.

(2) This section applies notwithstanding that an action has been started in a court of law and not finally decided before December 21, 1983.

1983 c44 s2; 1986 c34 s2; [1992 c38 s1](#); [1994 c27 s6](#)

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### Statutory lien

5.1 (1) [Rep. by 1995 c32 s4]

(2) Where the city has paid compensation to the lessor under subsection 2.1(2), the city may give the lessee a written notice requiring the lessee to reimburse the city within 120 days of the date of the notice for the amount of money the city paid to the lessor.

(3) Where the lessee does not reimburse the city within the time stated in subsection (2), the amount of money paid by the city to the lessor is considered to be an assessment.

(4) The provisions of section 281 of the *City of St. John's Act* shall apply, with the necessary changes, to an amount considered to be an assessment under subsection (3).

(5) The city shall require a lessee of an ancient or modern lease not in commercial use who wishes to obtain a tax certificate to purchase the freehold title to the land in the amount set out in section 3 or paragraph 4(1)(a) and to pay an amount for arrears of annual rent not to exceed 10 years before issuing a tax certificate to the lessee.

[1994 c27 s7; 1995 c32 s4](#)

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#### **Ancient lease in commercial use**

**6.** (1) An ancient lease of land that is being occupied for a commercial use is subject, notwithstanding a clause or condition to the contrary in the lease, to a condition that the lessee, during the currency of the lease, at his or her option

- (a) may purchase the freehold land at its fair market value as if the land were vacant land;
- (b) may obtain an extension of the lease for a period of 99 years to begin and be calculated from the end of the current term, at a fair annual rental for the freehold in the land as if the land were vacant land;
- (c) may be paid, where the lessee does not wish an extension of the lease and the lessor wishes to repossess the premises, at the end of the term of the lease the then unexhausted value of the building on the land; or
- (d) may, where neither the lessor nor the lessee wishes to renew the lease and the lessor does not wish to repossess the premises, have the land sold by auction and the proceeds divided between the lessor and the lessee in such proportions that the lessor will receive the realized value of the land and the lessee will receive the realized value of the buildings.

(2) An option provided by subsection (1) may be exercised by the lessee in possession of the ancient lease as property originally held by the lessee or his or her predecessor in title notwithstanding that an extension of the original lease or a new lease had been obtained from the lessor since August 1, 1921 by the lessee or his or her predecessor in title.

[1977 c94 s5](#)

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#### **Land not in use**

**7.** Where, under this Act, a lessee exercises his or her right to purchase the freehold of land held by the lessee under an ancient lease and the building on that land is not being used, the land and the building on the land shall be considered to be in use for the purpose for which they were used immediately before the use of the land and the building on that land stopped.

[1986 c34 s3](#)

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#### **Rights of assignee**

**8.** The holder by assignment or otherwise of a subdivision of land held under a head lease of a modern lease or ancient lease has and may enjoy with respect to that subdivision, to the exclusion of the rights of the original lessee over the land, the same rights to which the original lessee or his or her assigns are entitled with respect to the whole of the land under section 3, 4 or 6.

[1977 c94 s6; 1984 c39 s7](#)

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### **Rights of sublessee**

**9.** (1) For the purposes of sections 3, 4 and 6, where the term under a sublease of land held under a head lease of a modern lease or ancient lease is for the whole or substantially the whole of the balance of the term granted under the head lease, a sublessee of the land held under the head lease, or of a subdivision of land so held shall be considered to be an assignee of the original lessee.

(2) A sublessee described in subsection (1) has and may enjoy, with respect to the land described there or the subdivision of the land and to the exclusion of a right of the original lessee over the land, the same rights to which the original lessee or his or her assigns are entitled under section 3, 4 or 6.

(3) The sublessor of land described in subsections (1) and (2) shall be considered to hold the balance of the term of the head lease in trust for the sublessee.

1977 c94 s7; 1984 c39 s7

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### **Duty to assign freehold**

**10.** (1) Where an original lessee or his or her assigns has after August 1, 1921 obtained an extension of an ancient lease or has purchased the freehold of land held under an ancient lease, the lessee shall, upon demand, assign and transfer to an assignee of a subdivision of that land or to a sublessee of that land or a subdivision of that land as described in section 8 or 9 the full benefit and advantage of that extension of lease or purchase of the freehold where it affects the land held by that assignee of the subdivision or that sublessee of the land or subdivision, upon and subject to the same terms and conditions as those upon which that extension of lease or purchase of freehold was acquired by the original lessee or his or her assigns.

(2) Notwithstanding subsection (1), where the assignment or transfer described in that subsection relates to a subdivision of land, the rent or the purchase price payable shall be the proportion of the entire rent or purchase price paid by the original lessee or his or her assigns in respect of the whole of the land as the area of the subdivision bears to the area of the whole land.

1977 c94 s8; 1984 c39 s7

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### **Exemption for city**

**11.** (1) Where the council of the city as assignee of an ancient lease gives notice to the lessor of the land of its wish to exercise its right under section 4 or 6 to purchase the freehold of the land comprised in the lease, the council is not subject to the performance or observance of any of the covenants or conditions contained in the lease from the date the notice is given.

(2) Upon the giving of the notice by the council of the city under subsection (1), the freehold of the land held under the ancient lease immediately vests in the council of the city, and compensation for the freehold shall be determined and payable to the owner in accordance with this Act as it relates to ancient leases.

1977 c94 s9

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### **Currency of lease**

**12.** (1) For the purpose of this Act a lease shall be considered to be current and a lessee shall be entitled to exercise his or her rights under this Act notwithstanding that

(a) the rent due under the lease is in arrears;

- (b) taxes payable by the lessee under the lease are in arrears; or
- (c) the lessee has failed to maintain the property as required under the lease.

(2) Paragraph (1)(c) does not operate so as to make current a lease where the land has been made vacant by the removal of a building from the land.

1986 c34 s4

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### **Appointment of arbitrator**

**13.** (1) The council of the city shall appoint a person to be the arbitrator of disputes under this Act concerning land that is occupied for a commercial use.

(2) The Minister of Justice shall appoint a person to be the residential arbitrator to resolve disputes that may arise between the city and a lessor in connection with ancient and modern leases that are not in commercial use.

1977 c94 s10; 1983 c44 s3; [1994 c27 s8](#)

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### **Sections to apply to commercial use**

**13.1** Sections 14 to 18.1 inclusive shall apply only to a lease of land that is being occupied for a commercial use.

[1994 c27 s8](#)

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### **Attorney for absentee landlord**

**14.** (1) The lessors of an ancient lease or modern lease who do not live within the province shall appoint an attorney within the province with power to dispose of the freehold.

(2) Where a lessee of an ancient lease or modern lease who does not live within the province is the sublessor, he or she shall appoint an attorney within the province with power to dispose of his or her interest in the lease and to do other things that may be necessary to make good title of the freehold to his or her sublessee or assign.

(3) Where an attorney appointed under this section dies or becomes incapacitated, the person who made the appointment of that attorney shall appoint another attorney within 6 months after the death or incapacity of the earlier appointed attorney.

(4) Where an attorney is appointed under this section, the appointment shall within 30 days after it is made be registered in the Registry of Deeds.

(5) An appointment registered under this section

- (a) shall state for whom the attorney is acting;
- (b) shall include a description of the location of the property with respect to which the appointment is made; and
- (c) shall state the name of the original lessor of the property.

(6) A certificate from the Registrar of Deeds or from an attorney licensed to practice law in the province that no appointment can be found in the Registry of Deeds shall constitute sufficient evidence that no appointment has been registered.

[1977 c94 s11](#); [1983 c44 s4](#); [1994 c27 s9](#); [2013 c16 s25](#)

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### Public trustee's powers

15. (1) Where an appointment of an attorney has not been registered as required under section 14, the public trustee shall do those things that are necessary to provide for the granting of the right, title and interest of the lessor in and to the freehold upon payment into the Trial Division of the amount calculated in accordance with this Act for the purchase of the freehold.

(2) An action does not lie against the public trustee for anything done by him or her in good faith in purporting to act under this Act.

[2013 c16 s25](#)

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### Notice to exercise rights

16. (1) Where a person wishes to exercise a right given by this Act, he or she shall give to another person having an interest in the land concerned a written notice of his or her intentions.

(2) Where a person having an interest lives outside the province, the written notice may be given to the attorney of that person as appointed under section 14 or, where the appointment of an attorney has not been registered, to the public trustee.

(3) Where a person having an interest is not known or cannot be found and no appointment of an attorney has been registered, the written notice shall be given to the public trustee.

(4) A person who intends to contest the exercise of a right conferred on a lessee by this Act shall give a written notice of that intention to the lessee and shall state the grounds for contesting the exercise of a right by the lessee not later than 30 days from the date on which the lessee gave notice of his or her intention to exercise that right.

(5) Where, during the currency of a lease, a person gives notice under subsection (1) of his or her wish to exercise his or her right under section 3 or 4 or paragraph 6(1)(a) or (b) but the lease expires before the freehold is conveyed to the person,

(a) the right of the person to purchase the freehold is unaffected by the expiry of the lease; and

(b) for the purpose of calculating the purchase price of the freehold, the amount of the annual rental payable for the land shall, notwithstanding the expiry of the lease, be the amount of the annual rental payable for the land under that lease.

[1983 c44 s6](#); [1986 c34 s6](#); [2013 c16 s25](#)

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### Application to Trial Division

17. (1) Where a lessee gives notice to a lessor that he or she intends to exercise a right conferred on the lessee by this Act and

(a) no notice is given to a lessee under subsection 16(4); or

(b) a lessor refuses to convey the freehold upon tender to the lessor of the purchase price of the freehold calculated under this Act,

the lessee may make an application to a judge of the Trial Division for a grant of the freehold of the land occupied by the lessee.

(2) An application made under subsection (1) shall be accompanied by a copy of the notice required to be given by section 16 and an affidavit sworn to or affirmed by the lessee stating that

- (a) the lessee is entitled to purchase the freehold as provided for by this Act; and
- (b) the notice required to be given by section 16 has been given, and
  - (i) no reply has been received by the lessee, and
  - (ii) the lessor refuses to convey the freehold upon tender of the purchase price of the freehold calculated under this Act.

(3) The court, on the receipt of an application, a copy of the notice required to be given by section 16 and an affidavit required by this section and upon payment into the Trial Division of the amount calculated in accordance with this Act for the purchase of the freehold, may order the execution of whatever instrument of conveyance is necessary to convey the freehold to the person entitled to it.

(4) Where the arbitrator, in relation to a matter referred to him or her under subsection 18(1) orders a lessor, on tender of the purchase price of a freehold calculated in accordance with this Act, to convey the freehold to the party entitled to it and the lessor does not so convey within 30 days of that order, the party entitled to the freehold may apply to a judge of the Trial Division and on payment into court of the purchase price of the freehold, the court may order the execution of whatever instrument of conveyance is necessary to convey the freehold to the person entitled to it.

[2013 c16 s25](#)

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### **Referral to arbitrator**

**18.** (1) A person to whom a notice is sent under section 16 may apply to the arbitrator on the grounds that the lease is not current because at the time the lessee gave notice of his or her intention to exercise the right conferred by this Act to purchase the freehold there was no building on the land.

(2) Where the parties to an ancient lease of land to which section 6 applies are unable to agree on a matter referred to in subsection (1) of that section, either party may apply to the arbitrator for a determination of the matter in dispute.

(3) The arbitrator shall make, in relation to a matter referred to him or her under subsection (1), whatever determination appears just in the circumstances, and in particular may order the issuing of a conveyance of the freehold of the land that was the subject of arbitration to the lessee entitled to it.

(4) A person who applies to an arbitrator under subsection (1) shall post an amount as security for all the costs of a lessee of the land that is the subject of arbitration, to be determined by the arbitrator, including the cost of retaining a solicitor and the portion of the amount payable to the arbitrator by the lessee.

(5) The security for costs required to be posted by subsection (4) shall be paid to the arbitrator who shall retain it pending the outcome of the arbitration.

(6) An arbitrator shall not hear a matter referred to him or her under subsection (1) until the security for costs required to be posted by subsection (4) has been posted with the arbitrator.

(7) Where the determination of a matter referred to the arbitrator under subsection (1) is in favour of the lessee the arbitrator shall award the amount posted as security for costs to the lessee.

(8) Notwithstanding subsection (1), where a notice is given to the public trustee, the public trustee shall not make an application to an arbitrator for a determination of a matter.

[1986 c34 s8](#); [1994 c27 s10](#); [2013 c16 s25](#)

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### Appraisal

**18.1** (1) Where the parties to an ancient lease of land that is being occupied for a commercial use are unable to agree on a price for the land, the parties shall not apply to the arbitrator and shall each obtain an appraisal of the value of the land.

(2) Where the appraisals

- (a) are within 15% of one another the average of the 2 appraisals shall be the purchase price; and
- (b) differ by more than 15% an appraisal shall be carried out by a 3rd appraiser selected by the public trustee and the average of the 2 appraisals that are closest to each other in value shall be the purchase price.

[1994 c27 s11](#); [2013 c16 s25](#)

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### Arbitration procedures

**19.** The provisions of the *Arbitration Act* relating to arbitration apply to all arbitrations by the arbitrator or the residential arbitrator in respect of matters referred to him or her under subsection 13 (2), section 16 or 18 in so far as those provisions do not conflict with this Act.

[1994 c27 s12](#)

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### Disposal of money award

**20.** (1) Where an amount of money is tendered by a lessee in payment for a conveyance of a freehold under this Act and the lessor

- (a) is not known;
- (b) is known but cannot be found and no appointment of an attorney has been registered; or
- (c) is known and lives within the province and refuses to convey on tender of the amount

the money shall be paid into the Trial Division.

(2) A conveyance of freehold by either the city or an order of the court under this Act is valid notwithstanding a legal or equitable interest encumbering the freehold.

(3) Money paid into the Trial Division under this section, subsection 15(1) or section 20.1 shall be held by the court until the parties claiming it prove to the satisfaction of a judge of the Trial Division their right to receive that money.

[1977 c94 s16](#); [1983 c44 s7](#); [1986 c34 s9](#); [1994 c27 s13](#); [2013 c16 s25](#)

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### Payment into court

**20.1** Where the city receives an amount of money from a lessee for a conveyance of a freehold under this Act and the lessor is not known or is known but cannot be found, the city shall pay the money into the Trial Division.

[1994 c27 s14](#); [2013 c16 s25](#)

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### **Landlord improvements**

**21.** Where the lessor has carried out improvements or kept up the improvements in respect of the leased land, an amount agreed upon by the parties may be allowed to the lessor for those improvements where a right given by this Act is being exercised and failing agreement between the parties the arbitrator or the residential arbitrator shall fix an amount that he or she considers equitable in respect of the improvements and make an award to the person entitled to it.

1977 c94 s17; [1994 c27 s15](#)

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### **Form of reference and hearing**

**22.** (1) Where a matter is referred to the arbitrator or the residential arbitrator under this Act, the reference shall be made in writing but no special form of petition or reference shall be required.

(2) Notwithstanding anything in the *Arbitration Act*, the arbitrator or the residential arbitrator is not bound by legal or technical rules of evidence in conducting an arbitration for the purposes of this Act, and all arbitrations shall be dealt with by the arbitrator or the residential arbitrator as informally and expeditiously as the circumstances and consideration of fairness will permit.

1977 c94 s18; 1984 c39 s7; [1994 c27 s16](#)

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### **Apportionment of rent**

**23.** (1) For the purposes of the adjustment of rent in a matter relating to the purchase by a sublessee of the freehold in a subdivision of land held under a head lease that is an ancient lease or a modern lease, the portion of the annual rent payable in respect of the entire land under the ancient lease or modern lease that is fairly apportionable and applicable to that subdivision of the land shall be determined by agreement between the lessor under the head lease of the ancient lease or modern lease and the sublessee of the subdivision.

(2) In default of agreement under subsection (1), the portion of the annual rent apportionable and applicable to the subdivision that is required to be determined by agreement under that subsection shall be determined by the arbitrator or the residential arbitrator.

1977 c94 s19; [1994 c27 s17](#)

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### **Respective reduction of rents**

**24.** After an agreement as to apportionment under section 23 by agreement or by arbitration, the annual rent payable to the lessor by the lessee under the head lease of an ancient lease or modern lease described in that section and the annual rent payable to the sublessor by the sublessee under the sublease of the subdivision described in section 23, shall be reduced respectively by the amount so determined by agreement or by arbitration.

1977 c94 s20

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