



REI Mastery U



**GETTING
STARTED**

SELLER-FINANCING

**A GUIDE TO
SELLER-FINANCED
DEALS**

**JEFFERY S.
BREGGIO**

GETTING STARTED

In

SELLER FINANCING

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PRELIMINARY NOTES

This “Getting Started” into Seller Financing eBook will give you a greater understanding of seller-financed deals. It’s a great way to pick up more properties, increase your portfolio of rentals and even increase profits on flips.

While a great tool, it is a more advanced REI topic as there are some issues to understand. This Getting Started eBook does NOT fully cover those details! You should keep this eBook readily available for future reference. It’s a great reference guide. For more information, please check out our Professional Investor online program, our Creative Financing Mastery Course and the other available resources on our website.

This eBook is designed to be read in its entirety! Seller financing is like a puzzle with pieces that all fit together to form a whole. You can’t rely on one or two pieces alone to everything. It is critically important information. Please read the entire eBook.

Happy Investing!

Jeff

INTRODUCTION

Seller financing is one of the fastest growing areas of real estate investment. It's been utilized for a long time by experienced investors and now more and more newer investors. And even retail buyer and sellers are engaging in seller financing deals.

The words "seller financing" are very broad and cover several different kinds of transactions. But, the different kinds of transactions all require different considerations. So, it will be helpful to define how we use the term seller financing first. Remember, others may use different words to describe these transactions.

Seller financing, in its most general usage, means any deal where the seller stays involved in the transaction beyond a normal escrow period and closing. In a typical retail real estate transaction, there is a purchase agreement, an escrow period, and then a closing where the buyer takes ownership of the home and the seller gets cashed out. The buyer and seller probably never see or talk to each other again. In a seller financing transaction, however, there is an ongoing relationship between the buyer and seller.

We break down seller financing deals into three broad categories:

1. Seller financed transactions
2. Contracts for deed
3. Lease options

Let's describe each one of these generally before getting more detailed.

1. A Seller Financed Transaction A seller financing deal is one where the buyer buys the house and takes title (ownership) while the seller finances or helps finance the purchase price of the home. The key here is that the buyer takes title and the seller becomes a lender! We break this down further into what we call:
 - 1) **True seller financed deal**: This is an investors dream deal. It's one where there is no underlying mortgage and the seller becomes the lending bank for all or part of the purchase price. The loan can be secured by a regular note and deed.
 - 2) **Wrap deal**: In this deal, there is an underlying mortgage and the seller is still helping finance some (or all) of the purchase price in an amount that is GREATER than what is owed on the underlying mortgage. The seller's loan is therefore "wrapped" around the underlying mortgage and secured by an "all-inclusive" note and deed.

- 3) **Subject-to deal:** Here, there is an underlying mortgage and the buyer is going to buy the house “subject to” the seller’s mortgage, simply taking over payments. The buyer is contractually obligated to make the payment on the underlying mortgage. Here, there is nothing left owing to the seller, so an all-inclusive note and deed isn’t really necessary. But, many sellers like the added protection of getting one so it’s option in this kind of deal.
2. **Contracts for Deed:** This is a situation used in some states where the buyer buys the house on an installment contract, kind of like how you buy a car. Here the seller keeps title to the home, and the buyer gets possession and equitable rights during the contract term. The buyer records the contract for deed on county land records to secure their rights. Once the contract is fulfilled, the seller transfers title to the buyer. This method comes with a lot of issues that we’ll explain below and we generally do not recommend them. But the key is the seller keeps title.
3. **Lease Options:** While you may not think of lease options as a seller financing type deal, it is. The seller keeps title (ownership) of the home and becomes a landlord. The buyer becomes a tenant with an option to purchase at a later date. This can also be used in a lease “sandwich” where the buyer/investor then subleases the property (and possibly assigns the lease option) to another tenant/buyer. The key here is that the seller keeps title and becomes a landlord.

Hopefully you can now see the differences in these kinds of transactions. The reason we have to define them is because you structure them differently, use different documents and they come with different risks and benefits. The goal of this eBook is to help you see the different risks and benefits of each type of transaction so you are better prepared.

Before we discuss the pros and cons of the three types of seller financing transactions, let’s cover a few more general topics related to seller financing.

Due on sale clause: The due on sale clause (or sometimes called an “acceleration” clause) is a standard clause in pretty much all conventional and government mortgages. So, if you have a deal where there is an underlying mortgage the due on sale clause will always be an issue. The clause says that if the home sold or an interest in the home is transferred to someone else, the bank has the right to call the note due (accelerate it). This means if the bank finds out about a seller financing deal, they can demand that the underlying mortgage be paid in full.

The due on sale clause is triggered in both seller financed deals and the contract for deed. It is probably not triggered in a lease option.

Should I worry about the due on sale clause? This is a much-debated topic. Experienced investors have been buying seller financed properties for decades with little or no trouble. Banks, generally, don’t check title. As long as they are receiving payments, they don’t know. There are

also ways to lessen the likelihood that the bank will find out. But we recommend always being prepared with an exit strategy in the unlikely event the mortgage is called due. If banks ever start really looking into seller financing and calling notes due, then it will become very general knowledge among investors and strategies will change.

Is it illegal to seller finance a property with a mortgage? No. It's not illegal. It's just that the bank has the right to call the note due. Now, bank or loan fraud is illegal. So, lying to the bank about a transaction can be considered fraud. And, duh, we always recommend being completely honest in all your transactions.

Dodd-Frank Act: While this eBook is not an explanation of the Dodd-Frank Act, you should at least be aware of it. The Act was designed to protect buyers from unscrupulous lenders after the mortgage crash of 2008. And it's still evolving. When you are buying a home from the owner in a seller financed transaction, you are the buyer. So, you would be the only one to raise a complaint under the Act, which, of course, you're not going to do. It's just not going to be an issue in these transactions. And there are exemptions and a few hoops you can easily jump through if you're concerned. If you want a greater explanation, you can contact an attorney or go to our Education Center on our website for a video primer on the Dodd-Frank Act.

Equitable Interest: This is something most real estate educators do not discuss very often. With real estate, there is "legal" title and "equitable" title. Legal title means ownership by way of deed. Whoever is listed in the county records as the titled owner by way of deed, is the legal owner of the property. Equitable title is something created by the situation that gives someone an "interest" or an "equity" position in the house even though they do not own it. It's something created by the facts of the situation. But you have to really understand this term because if you own a home and give away an equitable interest, you may run into other issues. Namely, you can lose the right to evict someone out of the home because legally they "own" a part of the house.

A contract for deed always creates an "equitable" interest in the property. A lease option can create an equitable interest in the home. We will discuss how this happens below in our lease option section.

Contracts for deed and state laws: In a few states, the contract for deed is a very common way of buying and selling real estate. These states have a well-developed set of laws and a lot of experience in the courts, with attorneys and with real estate agents, buyers and sellers. So, everyone knows how they work and how they will be interpreted in the court system. In other states, however, these contracts are almost unknown. Courts don't know what to do with them. Lawyers don't know what to do with them. Agents don't really understand them. And, we find, buyers and sellers are completely in the dark about them. Before choosing to use any contract for deed, you should really understand the contract and each party should get an independent legal opinion on contract! Uncertainty, as well as the other issues defined below, are the reasons we do not recommend them for most investors in most deals.

Let's go over each one of these situations in more detail.

DUE ON SALE CLAUSE

Seller Financing: Yes. The due on sale clause is an issue that you should be prepared for in the unlikely event the bank finds out.

Contract for Deed: Yes, the due on sale clause is triggered and the bank could call the mortgage due. But, as title doesn't change hands, it might be less of a red flag to the bank. But our experience is that if a bank is looking at title, then they have a reason for doing so and won't stop just at who owns the property. They will look further and see the recorded contract.

Lease Option: The due on sale clause should not be an issue. Normally, a simple tenancy (lease agreement) will not be enough to call the note due. When coupled with an option to purchase (and possible equitable rights in the house), it is possible that a bank could consider the house sold "on contract" like a contract for deed. But this is something you don't need to worry about.

BUYER DEFAULT

First, what do we mean by buyer default. We mean that the buyer fails to pay the seller on the seller financing note and deed (or all-inclusive note and deed or the subject to contract); the buyer fails to make payment under the contract for deed; or the buyer/tenant fails to make the lease payments under a lease option. In this event, what are the seller's options?

Seller Financing: If the seller has a note and deed or all-inclusive note and deed (or a mortgage in a mortgage state), then the seller can foreclose on the buyer and take the house back. In trust deed states this can be done without a court and usually in 4 – 5 months. It's also not terribly expensive to do. In a mortgage state, it does require a court order. But most states have streamlined court processes and it doesn't take much longer than a trust deed state. Eviction is not an option as the buyer owns the home.

Contract for Deed: This is much trickier. The seller owns the home so it looks like they could evict. However, they cannot due to the "equitable" interest the buyer has in the home. Many sellers "try" to evict. This can be deemed fraud (if you tell a tenant they can be evicted, which is misrepresenting the law) and even theft (you "stole" their equity). These are crimes! You cannot evict the tenant if they own part of the home without restitution for that equity. If the buyer hires an attorney, their rights to their equity will be protected. The seller cannot foreclose because the seller owns the home and there is nothing to foreclose on. The only real option is a forfeiture case. This is litigation. It is time consuming and expensive, often taking a year or more. A court must determine what rights (equity) each party has to the home.

Lease Option: Normally, the seller can just evict as they would any other tenant. This does become tricky if the buyer has put up a big "option fee" (because they will fight the eviction) or

if the seller has treated the tenant in such a way as to give the tenant an equitable interest (again, they will fight the eviction). We'll discuss this more below.

SELLER LIABILITY

By seller liability, we mean the liability the seller has from risks (slip and falls, etc.) on the property.

Seller Financing: None! This is the great part of a seller financed deal. The seller no longer owns the property and is NOT liable for slip and falls. Of course, the buyer IS liable for this and should take all the same protections they would under any other kind of investment deal (like buying in an LLC and landlord's policy of insurance, etc.).

Contract for Deed: Yes, the seller is liable for acts on the property. The "owner" of a property is ALWAYS going to be named in a lawsuit. In most contracts for deed, there is an indemnity clause that says the buyer will "cover" any damages the seller is found liable for. But, as with all indemnity clauses, they are only as good as the person doing the indemnifying. You can't squeeze water from a rock. And remember, the biggest target is the property itself, which can be lost in a lawsuit.

Lease Option: Yes, because the seller is a landlord. And, as with our standard recommendation for landlords, title should be held in an entity with ample insurance. In a lease sandwich, the investor in the middle will be liable under their lease with the tenants. But, because the seller still owns the home, the seller could also get dragged into the lawsuit, so the seller should also be aware of this. Also, the investor should give the seller an indemnification (like in the contract for deed).

BUYER LIABILITY

Here we mean, what liability does the buyer have from risks on the property like slip and falls.

Seller Financing: All. The buyer takes title to the home and acts as a landlord. The buyer should have all the protections a good landlord has.

Contract for Deed: All. Because the buyer has "equitable" interest and the indemnification clause, the buyer is liable for slip and falls. The buyer should have all the protections a good landlord has.

Lease Option: In a simple lease option the buyer is a tenant and would be the one suing the owner for damages. In a lease sandwich, the middle-investor is both a tenant and landlord. As a landlord, again, take all precautions that a good landlord would.

SELLER LIENS/BUYER RISKS

In this category, we mean what encumbrances (liens) can the seller put on the property after the buyer either buys or takes possession of the home. This, of course, is a risk to the buyer as the buyer could lose the home or their equity in it.

Seller Financing: There is no risk here to the buyer. The buyer has taken title (and we always recommend buying in an insured transaction at a title company or attorney's office). The seller is just a lender at this point and can no longer encumber the property with anything.

Contract for Deed: The seller owns legal title to the home and can continue to encumber the property. The contract says the seller won't do this. But that's just a contract and won't stop a seller who's intent on doing it. As long as the buyer records the contract for deed, the seller won't be able to get a typical mortgage, but other things can affect the title. If the seller is sued, gets a divorce, doesn't pay state or federal taxes, these will all get recorded on title and will "dirty" title when the buyer is to finally take ownership. Also, if property taxes aren't paid, those jump to first in line (above the recorded contract for deed!) and the buyer could lose the house altogether if those are not paid. And, it could take a long and expensive court process to determine who gets what.

Lease Option: Yes, the seller owns the home and all the above problems can show up on title. However, the buyer hasn't really purchased the home yet and is just a tenant. If the seller can't deliver clean title when the option is exercised, the buyer can demand a return of the option fee because the seller will be in breach of the option agreement. So, while this is a risk, it can be handled much more easily than a contract for deed.

BUYER LIENS/SELLER RISKS

This is the opposite of the above. Here, what encumbrances (liens) can a buyer put on the property and thus negatively affect the seller.

Seller Financing: Well, here, the buyer owns the house and can do whatever they want but it's not really going to affect the seller. The seller is secured with a recorded note and deed and in a higher position than anything else that comes along. The one exception is property taxes. Remember, they jump to first in line! This is why sellers should take care to make sure the property taxes are paid!

Contract for Deed: While the buyer is not on title, there are ways for the buyer to encumber the property. Why? Because the buyer has "equity" in the home. If a divorce or plaintiff's attorney finds out the buyer has this equity, they can and will attach the judgment or divorce on the property. And you can be assured the ex-spouse will know about the property. Thus, the seller really isn't any more protected.

Lease Option: Because the buyer/tenant doesn't own the property and won't until the option is exercised (and assuming the circumstances haven't given them an equitable interest), there's nothing the buyer can do to encumber the property. The seller is protected.

DEATH OF THE SELLER

Remember, all "seller financing" deals are transaction where the buyer/investor is in a long-term relationship with the seller! It's kind of like partnering with the seller. Many investors forget to think about what happens if the seller dies. There are several affects that the death of someone has on a deal and several ways to handle that situation, and we don't cover them all here.

Seller Financing: Here, the seller is simply a lender and the seller's death isn't a big issue. The one problem might arise is removing the seller's trust deed (or mortgage) when the seller is finally paid off. If they are dead, they can't sign the documents to remove it. But, some states have options where as long as there is proof of payoff and can't get ahold of the lender, the title company or attorney can remove the lien. And as far as making payments, the buyer just continues making payments to the estate of the seller.

Contract for Deed: Seller death can become a bigger issue here as the seller still owns the property. In many contract for deed situations, a warranty deed is signed in advance and held in escrow by the title company or attorney. These are call "sleeper" deeds or "drawer" deeds. Because of the way deeds work and liability issues, these can be highly challenged and many title companies or attorneys won't record them if both parties don't sign off at the time of actual recording. The other issue is heirs will step in the shoes of the seller. Our experience is that when heirs step into the picture, they are not very accommodating to the buyer.

Lease Option: Your option agreement should bind heirs, so you should be able to still enforce the option to purchase just as you would with the seller. The home might have to go through probate (if not held in a trust) and heirs can be more difficult to work with.

EXIT STRATEGY

By exit strategy we mean what options does a buyer have if they need to get out of one of these deals and sell the house.

Seller Financing: The buyer owns the home and can sell it at any time. So, normally, there is no exit "strategy needed" in a seller financing deal except in the event the underlying mortgage is called due. And since the buyer owns the house, they could simply sell it if, for any reason, the buyer needed to get out of the house.

Contract for Deed: The big problem here is that the buyer doesn't own the home. So, it's impossible to just sell it without the help of the seller (seller has to sign buyer-broker agreement, purchase contracts, closing documents). Our experience is that sellers aren't exactly

accommodating to this request. In fact, most are obstinate. They think if the buyer can't get out of the contract then the buyer will breach, and they can simply evict and get the house back with all the appreciation and equity. Sellers get greedy and nothing obligates them to help facilitate the sale. The buyer's only real option is to come up with the funds (which can be difficult!!) to buy out the sellers from the contract, take title, and then sell the house.

Lease Option: Here, if the buyer can't exercise the option, most likely they will be evicted and lose the option fee. But that's about it, and this is easily factored in to your analysis at the beginning. If investors understand the lease option (and the "sandwich" lease option) as we describe below, then other problems can be avoided.

There you have it! Our comparison of the three major ways to structure seller financing deals. As you can see, the preferred method is a seller financed transaction. Buyer gets title and all the benefits, very little hassle from the seller, easy exit strategy and easy protections from the risks of owning real estate. A lease option is also a great way to go if the seller wants to retain title. Risks are easily known and preventable (everyone is familiar with landlord-tenant law). A contract for deed, for the most part, takes the risks of seller financed deals and combines them with the risks of lease options and without any real benefits that you can't otherwise get. That, coupled with the lack of legal and court experience, we don't recommend them.

Now, let's talk more about the two ways we prefer to do seller financing deals!

SELLER FINANCED TRANSACTIONS

As we mentioned above, we break down seller financed transactions into three specific types of deals. Here we will get into a bit more detail on the 3 types of seller-financed deals and then we'll talk about lease options.

NOTE: Seller financing is a complex and advance investment technique. This eBook does NOT cover all the ins and outs of a seller financed transaction. We have other educational resources available on our website.

1. **True Seller Financed Deal:** This is the golden nugget of real estate investing. A seller owns the property free and clear and finances the buyer's purchase.

All that is really required for this kind of transaction is a purchase agreement (just like any other purchase agreement) and the seller finance terms. Then, a note is created (based on the seller finance terms) and a trust deed (or mortgage) is recorded as part of the closing. Since most investors should know how to do a purchase agreement, we'll focus on the terms of the note.

These are the main terms that should be covered:

- a. Seller financed amount
 - b. Interest rate
 - c. Term: Is there a balloon date?
 - d. Amortization rate: You should familiarize yourself with this if you don't know what it is. It will establish how much of the monthly payment is principal and how much is interest.
 - e. Monthly payment: Will it be made directly to seller or to a third-party escrow company?
 - f. Taxes and insurance: You will need to determine how these are to be paid. Will they be escrowed each month? Will buyer pay directly at tax time and insurance renewal? How will lender know if they have been paid and what can seller do if they are not?
 - g. Lender instructions: Will the title company/attorney collect interest for the month of closing? Or how will that be done? Will there be a lender's policy of title insurance?
 - h. Default terms: When does default occur? What default interest rates apply? What are seller's options in the event of buyer default?
2. **Wrap Deal:** This is a deal where there is an underlying mortgage and the seller is financing an amount more than what is owed on that mortgage.

When there is an underlying mortgage, a lot more things need to be considered and incorporated into the purchase agreement and the all-inclusive note and deed. First, you should use a good seller financing contract (as opposed to a contract normally used without seller financing). There are disclosures (about the underlying mortgage and due on sale clause) that need to be covered. Also, the all-inclusive note and deed should be drawn by a competent attorney as they also have very specific language in them. Do NOT use a standard note and deed that are often provided by

title companies. You will also want a copy of the mortgage note (to confirm those terms) and the most recent mortgage statement (to confirm current balance and if there are any arrears).

Here are some of the important inclusions that regular contracts do not cover. Remember that the seller typically will NOT sign the all-inclusive note and deed. And you are buying the property subject to some liens (the mortgages) and not others (like other debt). So, these terms need to be in a writing signed by the seller if you are going to enforce them! Put them in the contract itself!

- a. Due on sale clause: You want language that not only discloses the due on sale issue to the seller but what happens in the event the mortgage is called due. The last thing you want is the seller coming back after you stating they didn't know about this.
- b. Seller's Acknowledgement: Not only should you have a specific seller financing agreement, but we also recommend a stand-alone seller acknowledgement form for extra protection. This covers a lot of additional disclosures that may prevent lawsuits in the future.
- c. Taxes and insurance: You need to determine if these are escrowed in the underlying mortgage or if they are being handled by the buyer. This is important at closing since taxes are normally prorated but won't be if they are in the underlying mortgage! Many title companies do NOT know how to close a deal like this! You also need to cover the return of escrowed funds when the underlying mortgage is paid off. Remember, that will go to the seller, but the buyer will have been making those payments.
- d. Mortgage interest deduction: You need to determine who gets this. Both the buyer and seller cannot claim it. Remember that the 1099 interest statement will go to the seller (and they will claim it!) if you don't change the mailing address at the bank. This needs to be discussed and put in the contract to prevent issues down the road.
- e. Adjustments to underlying balance: There should be language that if the underlying balance is higher or lower than what is expected then the purchase price can be adjusted.
- f. Adjustments to escrowed funds: All mortgage payments change over time if taxes and insurance are escrowed in. You need to account for these changes, especially if the payment on the underlying mortgage becomes bigger than the payment to the sellers.
- g. Breach: Since there is an underlying mortgage, the ramifications of a buyer breach are greater than in a true seller financed deal. The seller's credit is at risk. What constitutes breach should be in the contract as well as the all-inclusive note.
- h. Indemnifications: The contract should also prevent the seller from doing anything that might give notice to the bank with indemnifications if they do. This should also include an indemnification from a seller bankruptcy.
- i. Seller warranties: A good contract will include warranties about other liens or encumbrances.
- j. Provision of bank information: The seller should be obligated provide to buyer all the bank and loan information, including online access.
- k. Arrears: If there is money to bring the loan current, this should be address in the contract and how/when it's going to be paid up.

- l. Insurance: The contract should state that the seller will leave the current home owners insurance in place. The buyer should get their own policy.
- m. Additional documents: In addition to the seller financing contract, the buyer should get a specific power of attorney that will allow the buyer to talk to the mortgage bank, a lenders letter (sometimes works instead of the power of attorney) and a insurance letter (that allows the buyer to talk to the insurance agent/underwriter of the current insurance).

For the all-inclusive note and deed, this will need to include all the same terms as a regular note and deed. However, the documents are very different and should be created by someone knowledgeable in seller financing deals.

3. **Subject to Deal**: This is a deal where the buyer simply wants to take over the current mortgage payments. This happens if the home is upside down or there is no equity, or if the seller is getting cash at closing for any equity and the buyer “assumes” the underlying mortgage at those terms.

This is a very common type of investment transaction. The seller usually just wants to walk away from the home and let someone else deal with it. It will look just like a Wrap, just with or without the all-inclusive note and deed. You should have a good seller financing contract with all the necessary terms.

Since the seller is not owed anything further after closing, there isn't a requirement to have a seller financing all-inclusive note and deed. But, providing one does give extra protection to the seller in case the buyer defaults. If the buyer defaults, just like in a wrap, the seller can foreclose and take the property back. This is something left to negotiations with the seller.

LEASE OPTIONS

Lease options, as a transaction, are not that difficult. It's really just a lease agreement and an option to purchase at a future date. Until the option is exercised, the buyer is a tenant and the seller is a landlord. Most investors have at least a base understanding of landlord-tenant issues. And when the buyer wants to exercise the option, the parties create a purchase agreement to sell the house.

In a lease sandwich, an investor gets a “master” lease option from the seller and then turns around and leases the property to a tenant who will actually reside in the home. The investor can also assign the option to the tenant. A “master” lease is just one that allows subleasing. Most standard rental lease agreements prohibit the tenant from subleasing. So, make sure your master lease allows you to sublease.

The biggest issue to remember is the “equitable” interest that we've discussed above. If you're on the “landlord” side of the lease, you want to make sure you do NOT give your tenant an

equitable interest. If you're on the "tenant" side of the lease, you can protect yourself by gaining this equitable interest and getting more rights to the property.

If you give a tenant equitable interest, that can prevent you from evicting them. Instead, you may end up in court to determine what rights the tenant has. So, what can give the tenant equitable interest?

Here's a list.

1. Separate or combined lease & option agreements: As a seller, you want two separate documents. As a tenant, you'll want to combine the lease and option into one single document. If the documents are separate, you can file your eviction with just the lease. The judge may never even see that there is an option. This will make eviction easier.
2. Down payment v. option fee: A down payment is "buying" equity in the house. An option fee is merely a fee to hold the house for the buyer until they exercise the option. If you're on the landlord side, always take an option fee and NOT a down payment toward the purchase price.
3. Length of lease: The longer the lease, the more it could look like a contract for deed. Most tenants don't sign 5- or 10-year leases. So, having a lease and option for a long period can make it look like a purchase situation and give the tenant equitable interest.
4. Rent v. mortgage payment: If you allow the tenant to make a little payment towards the purchase price each month in their rent, then it looks like they are slowly "buying" the home. Many investors make this mistake as they want to help the tenant build up a down payment. But doing so gives your tenant equity rights in the property.
5. Capital improvements: If you allow a tenant to make major repairs to the home, they are gaining the appreciation that results from the improvement. They can claim that value as their equity. If you are on the landlord side, treat your tenants like tenants!

Thanks for reading this eBook. Remember, this eBook is not meant as a comprehensive education on seller financing deals. If you need additional education, please ask us about our education videos and forms.

Happy Investing!

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