

# Body Corporates 2020

Presenter: **Caryn Maitland CA(SA)**

*Accounting and Legislation*

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# Presenter

## Caryn Maitland

Caryn is a qualified CA(SA and RA, who has lectured extensively at UKZN (and other institutes) where she lectured Advanced Financial Accounting up until 2011 as well as co-ordinating the module on the Pietermaritzburg campus and was appointed Section Head of Financial Accounting and Deputy Head of the School of Accounting (managing the Pietermaritzburg campus) prior to leaving UKZN.

She has conducted independent workshops and seminars for professional accountants since 2006 on various topics and has consulted on a number of technical issues. Since January 2011, she has focused on her own business as technical freelance consultant and trainer to those working within the accounting profession. Caryn is a technical advisor to the SAICA Eastern Region Midlands District, Northern District and Southern District Associations, as well as the Small Practice Interest Group in Durban – specialising in financial reporting (IFRS, IFRS for SME's and general accounting), assurance, legislation and ethics. Caryn has a passion for Corporate Governance, which together with her Companies Act specialism and Financial Management for Non Financial Management lecturing background, has served her well in consulting and advising various Boards of Directors in recent years.

Caryn is also a platform presenter for various institutes as well as many small to medium accounting practices across the country and into Southern Africa. Maitland was appointed as a visiting Associate Professor to the University of Limpopo tasked with mentoring their Financial Accounting staff (Aug 2011 to Dec 2013).

Maitland's passion is IFRS and IFRS for SME's and was delighted at the opportunity granted in 2013 to serve on the APC subcommittee constituted to investigate the need for Micro GAAP and the role of IFRS for SME's for small and medium sized practitioners. Caryn, also serves on the Joint Accountants, Auditors and Attorneys Committee of SAICA, and is part of the School Governing Body project initiated by SAICA in KwaZulu-Natal, and has been appointed as an alternative member to the APC in June 2020

Caryn was elected as the first woman Chairperson for the Midlands District Association for SAICA in 2018 and also serves on the Eastern Region SMP Committee as well as the Local Subvention Committee for SAICA. In 2019 Caryn was appointed to the SAICA Eastern Region Council. As someone who is committed to environmental affairs, Caryn serves as a non-executive director for the Institute of Natural Resources, a Non Profit Company focusing on research. Since 2018 Caryn has worked extensively with commerce and industry, assisting analysts, directors and other users of financials to interpret, prepare, analyse and forecast based on the results of financial statements.



# INTRODUCTION

# Introduction

- What is a body corporate?
- Bodies corporate vs body corporates??
- The Sectional Titles Act, 1986 as amended
- But THE ACT referred to is the **Sectional Titles Schemes Management Act, 2011**
- The Management Rules – gazetted 7 October 2016
- Big issues:
  - The funds
  - Auditing requirements and effects thereof

# Funds – Administration Fund and Reserve fund

- Purpose
- Reserve Fund – amount set aside by the body corporate to meet unexpected costs that may arise in future, including future costs of maintenance

# Minimum amounts for reserve fund

- Purposes of S(3)(1)(b) of the Act – the minimum amount of the annual contribution to the reserve fund for the financial year being budgeted for, must be determined as follows:
- If the closing balance in the reserve fund for the previous year is
  - less than 25% of the total contribution to administration fund for the previous year,
    - The budgeted contribution to the RESERVE FUND must be at least 15% of the total contribution to the ADMINISTRATION FUND
  - Equal to or greater than 100% of the total contribution to administration fund for the previous year
    - There is no minimum contribution to the reserve fund
  - More than 25%, but less than 100% of the total contribution to administration fund for the previous year
    - The budgeted contribution to the reserve fund must be at least the budgeted amount to be spent from the administration fund on R&M on the common property in the financial year being budgeted for

# Other Risks to be insured against

- BC may insure against (S3(1)(h)), are
  - Lightning, explosion and smoke;
  - Riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
  - Storm, tempest, windstorm, hail and flood;
  - Water escape, including bursting or overflowing of water tanks, apparatus or pipes;
  - Impact by aircraft and vehicles; and
  - Housebreaking or any attempt thereat



# Powers of a Provisional *curator ad litem* and *curator ad litem*

- Whose appointment has been confirmed by the Court, in addition to any powers expressly granted by the Court, are
  - To attend, ask questions and speak, but not vote, at meetings of the body corporate and of its trustees; and
  - To inspect and make copies of any information about the affairs of the body corporate relevant to the curator's mandate



# Rules

- As prescribed and as amended by the body corporate in accordance with S10 of the Act, *must be considered to be and as laws made by and for the body corporate of that scheme*
- Management rules and conduct rules
- Developer can add, withdraw amend etc provided not in contravention of the Act or Regulations

# Service address

- If the body corporate's address changes, note need to notify the Ombudsman

# Effective date

- Regulations came into effect when Gazzeted – 7 October 2016

# THE RULES

# Trustees

# Trustees

- All members are trustees until the end of the first general meeting
- If less than 4 members, all are recognised as trustees without election (subject to R6(4) and R28(1))
- More than 4 members of primary sections, must from time to time determine the number of trustees

# Requirements of office and disqualification

- Trustee may not be a juristic person
- Person who is a managing agent or an employee thereof may not be a trustee unless they are a member of the BC
- If a trustee has a direct/indirect personal interest – must recuse themselves from the meeting/discussion/consideration of that matter

- A trustee ceases to hold office if that trustee:
  - Resigns in writing
  - Is declared by the court to be of unsound mind
  - Becomes insolvent and insolvency results in sequestration of trustees estate
  - Is or has been convicted of theft, etc (RSA or elsewhere)- offence involving dishonesty
  - Sentenced to imprisonment without the option of a fine
  - Removed from office of trust on account of misappropriation of funds or misconduct wrt fraud
  - **Is removed from office by an ordinary resolution;**
    - **Provided intention to remove was specified in notice convening the meeting**
  - **Becomes disqualified to hold office as a director**
  - **Fails or refuses to pay the BC any amount due to it (after order or judgement to pay)**



# Nomination, election and replacement

- A member may nominate any person
- Must be in writing accompanied by written consent of nominee delivered to BC 48hrs before AGM starts
- If insufficient nominations received prior, calls for nominations may be heard at the meeting (with nominee consent)
- Unless stated otherwise in the rules, trustees must be elected at each AGM
- If trustee ceases to hold office, the remaining trustees or members at a general meeting may appoint a replacement (holds office until next AGM)
- Trustees can appoint a replacement for a specified period if a trustee is absent or unable to perform their duties

# Payment and indemnity

- BC must reimburse trustees for all disbursements and expenses actually and reasonably incurred in carrying out their duties
- Need a special resolution, trustees who are members, are NOT entitled to any reward for their services (monetary or not)
- Non member trustees may be rewarded, provided approved by the BC by resolution as part of the budget for the scheme's administration fund
- BC must indemnify a trusts (who is not a managing agent) against all costs, losses and expenses arising as a result of an official act PROVIDED NOT A BREACH OF FIDUCIARY DUTY to the BC

# Trustees meetings and decisions

# General powers and duties

- Carry out meetings as the trustees see fit and per these rules and common law of meetings
- Exercise the BC's powers and functions assigned and delegated to them i.t.o. the Act and resolutions taken at general meetings and meetings of trustees
- Apply the BC's funds in terms of the budgets approved by members in general meetings
- Appoint an agent or employee in terms of a duly signed contract
- Compile minutes of trustee and general meetings
  - Distribute as soon as reasonably possible, but not later than 7 days after the date of the meeting

# Validity of actions

- No document signed on behalf of the BC is valid and binding unless signed on authority of a trustees resolution by
  - 2 trustees, or managing agent, in the case of a clearance certificate issued by BC
  - 2 trustees or 1 trustee and managing agent for all other documents
- Resolutions or acts performed by trustees remain valid and effective notwithstanding the later discovery of a defective appointment or disqualification of a trustee

# Calling and attendance of meetings

- A trustee may call a meeting – **not less 7 days written notice plus agenda**
  - Emergencies – may give shorter period (as reasonable)
  - Notice need not be given to a person who is absent from RSA, but need to give replacement
  - Trustees can set dates and have a standard agenda by resolution for future meetings – deemed notice
- Electronic meetings (know who is attending...)
- Members, registered bondholders, holders of future development rights and the managing agent
  - May attend and speak to trustee meeting agenda points
  - May not propose any motion or vote
  - May not attend meetings that deal with contraventions of the Act/regulations or any other matter that the trustees resolve that their presence will unreasonably interfere with the interests of the BC or person's privacy (think POPI...)

# Chairperson

- Don't need one if there are only 2 members
- Developer is the first chairperson
- Elected by trustees as a majority vote first trustees meeting after AGM
- Re-elected at AGM
- Can be removed in same manner as a trustee (resolution of members or trustees provided notice given)
- Trustees can fill a vacancy until next AGM
- Replacement Chair if elected Chair is absent

# Quorum

- 50% of the trustees by number, but not less than 2
- If no quorum is met, trustees may continue with the following matters
  - Appoint a replacement trustee to make up quorum
  - Call a general meeting
- If quorum not present within 30 minutes, trustees present must adopt “interim” resolutions for items on agenda
  - Needs to be confirmed at next trustees meeting, or
  - By written resolution signed by all trustees



# Voting

- A motion at a trustees meeting
  - Does not have to be seconded
  - Determined by majority
- Each trustee gets one vote
  - Deadlock – chairman has a casting vote (unless only 2 trustees)
- Trustee can't vote if they have
  - A dispute
  - Personal interest

# Owners meeting

- 14 days notice to
  - All members, registered bondholders, holders of future development rights, the managing agent
  - Can waiver right to meeting if all waiver right in writing
  - Provided if 2 or more persons are jointly entitled to exercise a vote, all must waiver
- The notice of a general meeting must be accompanied by at least
  - The agenda
  - A copy or comprehensive summary of any document that is to be considered or approved
  - A proxy appointment
- Meeting must be held in the local municipality, unless agreed by a special resolution

- Registered bondholders, holders of future development rights and the managing agent
  - May attend and speak to trustee meeting agenda points
  - May not propose any motion or vote
  - May not attend meetings that deal with contraventions of the Act/regulations or any other matter that the trustees resolve that their presence will unreasonably interfere with the interests of the BC or person's privacy (think POPI...)
- On 7 days or less notice – if urgent
- Less than 14 days if all agree in written
- Failure to give proper notice of a general meeting does not invalidate resolutions if BC made a reasonable attempt

# First general meeting (rule 16)

- The developer

# Annual and special general meetings

- AGM within 4 months of the end of each financial year
- Not obliged to hold an AGM if, before or within one month of the YE,
  - all members in writing waiver their right to the meeting and consent in writing
  - to motions that deal with all items of business that must be transacted at meeting
  - Provided if 2 or more persons are jointly entitled to exercise a vote, all must waiver
- All general meetings that aren't AGM's are special meetings
- Trustees can call a general meeting, and MUST do so if requested (within 14 days of notice) in writing by
  - Members holding 25% of total quota of all sections, or
  - Holder of mortgage bonds over not less than 25% in number of all the primary sections
  - Holders and/or members must include motions or matters to be discussed in their request
  - Failure to do so, results in above bondholders and members being entitled to call meeting directly

# Order of business of AGM

- Confirm proxies, voting cards etc
- Establish quorum
- Elect chair if necessary
- Present proof of notice/waiver of notice
- Approve agenda
- Approve minutes of previous meeting
- Deal with unfinished business
- Deal with business if requested by members/bondholders that have requested the meeting
- First AGM..... (Rule 16)

- AGM

- Receive sub committee reports
- Approve schedule of insurance replacement values (Rule 23(3))
- Determine the extent of the insurance cover by BC
- Approve budgets for Administrative and Reserve Fund for next financial year
- Consider AFS
- Appoint auditor **unless scheme registered in the name of one person**
- If more than 4 member and not managed by a managing agent– determine number of trustees for next financial year
- Elect trustees

- Report on lodgement of any amendment to Management Rules
  - Deal with new business
  - Give direction or impose restrictions (by members) per S7
  - Dissolve the meeting
- 
- Agenda must be clearly drafted as well as proposed resolutions
  - Electronic meetings
  - Chairperson (15 minutes) (rule 18)
    - Must **NOT** disclose in advance how they are going to vote



# Quorum

- Less than 4 members =  $\frac{2}{3}$  total members
- Any other scheme = more than  $\frac{1}{3}$
- Provided at least 2 persons from each section must be present
- Unless all sections in the scheme are registered to 1 person
- Value of votes held by
  - developer must not be taken into account
  - Body corporate must not be taken into account
- 30 minutes – adjourn to same day and time next week. On that day if quorum not achieved, meeting will go ahead

# Voting and representatives

- Motion does not need to be seconded
- Majority vote, calculated on value of votes, of the members present
- Except for special or unanimous resolutions, a member is not entitled to vote if
  - Fails or refuses to pay (court order/judgement issued)
  - Member persists in the breach of any of the conduct rules (court order/judgement issued)
- Purpose of votes, value of votes held by BC = abstentions
- Member = trustee for a beneficiary, only trustee may vote (excludes beneficiary)
- Proxies (can not be managing agent or employee thereof)
- joint interests

- Special resolution - Passed at a meeting with less than 50% members present
  - BC cannot take action for 1 week unless trustees resolve immediate action necessary based on certain grounds
  - Within 7 days of resolution members holding at least 25% of total votes of all members, by written and signed request to BC, require the BC to hold a special general meeting to reconsider
    - Trustees may not implement resolution unless special resolution is passed, or quorum not met within 30 minutes

# Financial Management

# Financial year, functions and powers

- Financial year = October to September, unless otherwise resolved at general meeting
- BC MUST NOT
  - Make loans without a unanimous resolution
  - Refund to any member a contribution lawfully levied and paid
  - Distribute to a member or any other person any portion of the BC profits or gains **except:**
    - **Upon destruction/deemed destruction of the building**
    - **Where such profit/gain is of a capital nature**

- BC, may on authority of a written trustee resolution
  - Levy members with a **special contribution** – required to meet additional expenditure that cannot be reasonably delayed until the budget next year
  - Increase the contributions due by a **maximum of 10%** at the end of the financial year for anticipated increases in liabilities. Effective until notice of next years contributions are given.
    - Need to give notice and context
  - Charge interest on overdue amounts payable (can't exceed max rate per NCA, compounded monthly in arrear)
  - Invest any moneys in the reserve fund in a secure investment with a “financial institution”

- Enter into contracts
- Join organisations and subscribe
- Delegate to trustees/members/management agents/employees
  - Can revoke delegation
  - Must specify power/duty, maximum amount of BC funds that can be spent, and conditions
- Approach Community Services Ombudsman Service for relief
- BC **must** ensure all monies received by BC are deposited into a interest bearing bank account
  - In BC name
  - Or Estate Agent or Attorney trust account

# Maintenance, repair and replacement plan

## MRRP

- Must prepare a written MRRP for common property, setting out
  - Major capital items expected to require MRR in the next **10 years**
  - The present conditions of items
  - Time when those items will need to be MRR
  - Estimated cost of MRR
  - Expected life
  - Any thing else
- Annual contribution to Reserve Fund for MRR of major capital items must be determined = (estimated cost-past contribution)/expected life
- MRRP effective from members approval at GM (members can lay down conditions of payment)
- Trustees must report back on implementation of plan at AGM



# Insurance

- Insurance policies
  - Must provide cover per risks above
  - Anything else members agree on
  - Holders of registered first mortgage holders holding not less than 25% of primary section require
- Specify replacement value of each unit and exclusive use area (excluding members interest in land in scheme)
  - Member can request replacement value to be increased (by written notice to BC)
- Restrict application of “average clause” to individual units – mustn’t apply to building as a whole
- Must obtain a clause into which policy is valid and enforceable by any holder of registered bond (insurer terminates with 30 days notice)
- May include provision for “excess” amounts

- A member is responsible for
  - payment of additional premiums due to increased replacement values
  - Any excess amount relating to damage that the member is obliged to repair/maintain
  - Furnish proof of payment within 7 days
- A BC must obtain a **replacement valuation** of all buildings and improvements that it must insure every 3 years – present at AGM - show estimates of
  - Replacement values of buildings and improvement to common property
  - Replacement values of each unit, excluding members interest in land
- BC must take out
  - **Public liability insurance** (not less than R10million)
  - **Insurance for risk of loss of funds**
  - **Any thing else member request**

# Administration and reserve fund

- Administrative Fund
  - Must be used to fund the operating expenses of the body corporate for a particular year
- Reserve Fund
  - Must be used for the implementation of the MRR Plan of the BC
- Must be paid into the Reserve Fund
  - Annual levies designated for MRR
  - Amounts received from insurance policies (damage or destruction)
  - Interest earned on invested fund money
  - other amounts per BC
- All other BC income must be paid into the Administration fund

- Amounts paid out of Funds must have trustee resolutions and
  - Administrative Fund = Per approved budget
  - Reserve Fund = per MRR Plan
- Trustees resolve
  - Payment is necessary and urgent MRR expense, which purpose includes (not limited to)
    - Court/adjudicator order
    - MRR due to safety or prevention of significant loss or damage to persons/property
    - Repair to property BC responsible for that could not have been foreseen in MRRP
    - Enabling BC to obtain adequate insurance
  - Trustees must report to members ASAP
  - Expenditure must
    - not exceed amount necessary or any limitations imposed by BC
    - Comply with any restriction/directives imposed by members

# Contributions and Charges

- BC must asap (not later than 14 days after approval of budgets at GM)
  - Give each member written notice of contributions and charges due and payable.
  - Between the Financial YE and date that new contributions communicated, existing arrangement stands
- State
  - Obligation, Due date interest on overdue charges, Details of dispute resolution
- If monies owing not paid, BC must send a final notice stating
  - Obligation and interest will be charged
  - If applicable, details of interest (rate and amount)
  - BC intends to take action within 14 days
- Member liable for all reasonable legal costs/disbursement incurred by BC in recovering outstanding contributions or in enforcing compliance with Act/Rules
- BC cannot debit members account without consent/authority/judgement
- **The BC must in its AFS account for all contributions and charges debited to members accounts**
  - **On written request – BC must give written detailed account of member’s account with BC**

# Financial records, budgets, reports and audit

## RULE 26

- A BC must
  - Keep proper books of account that
    - Record all its income, expenditure, assets and liabilities
    - Disclose all amounts recovered from members by the BC or any managing agent or other service provider acting on its behalf
    - Include individual accounts for each member, and
    - Contain all other info necessary to allow members to assess the BC's financial position and situation
  - **Keep separate books of account and bank accounts for its administrative fund and reserve fund**

# Prepare AFS for the AGM, which **MUST** include the following

- Amounts due to the BC i.r.o contributions, special contributions, other charges,
  - classified **per member** and
  - in the periods for such amounts were owed (aging)
- Amounts due by the BC to its creditors generally,
  - **and prominently disclosing amounts due to public authorities** (examples)
  - and in periods for which owed
- **Amounts advanced to the BC by way of levy finance, a loan**, in terms of guarantee insurance policy or otherwise, setting out actual or contingent liability
- Amounts in the **Reserve Fund**, showing
  - The amount available for MRR of each major capital item as a percentage of the accrued cost and
  - the Rand value of any shortfall

- Premiums and other amounts paid and payments received
  - By BC or any members in terms of insurance policies of the BC, and
  - Expiry date of each policy
- Amounts due and payable to the Community Schemes Ombud Service



# Additional reports at AGM

- Prepare Maintenance, Repair and Replace Plan
- Budgets for Admin and Reserve Funds
  - Max discount for early payment of levies = 10%
- Report by Trustees reviewing affairs of BC

- Access to records
  - Member, registered bond holders or managing agent
  - On application, BC must make all and any books of account and records available for inspection and copying
- Retention of records
  - 6 years after the completion of transactions, acts or operations to which they relate

# Audit of AFS

- All BC's must present audited AFS to a general meeting for consideration within 4 months of year end, **except if BC registered in one persons name**
- **Independent registered auditor**
  - Did not participate in the prep of AFS or advise on any aspect of the accounts during the period being reported on
  - No reporting framework per se

- Must include opinion on whether or not
  - AFS accurately reflect financial position (reservations/qualifications deem necessary)
  - BC compiled with Rules 21 (*financial year end, functions and powers*) , 24 (*funds*) and 26 (*financial records, budgets, reports and records*) specifically
  - Books of account have been kept and its funds have been managed with a reasonable level of protection against theft
  - Financial affaires appear to be effectively managed

# Questions to be Answered....

- 1. What qualifications does the compiler need to have?
- 2. If a body corporate has never prepared financials before, does one prepare financials for 2017 with a comparative for 2016, or start with 2018 with a comparative for 2017, using the requirements of the new Act and regulations?
- 3. Statement of Equity – should reserves be split up between the Administrative Fund, Special Levies and Maintenance Reserve, and any special reserves?
- 4. Statement of trustees responsibilities - should comments on the requirement of the trustees to evaluate the solvency ratio of the body corporate and application of the requirements of regulation 2 (minimum amounts for Reserve Fund) be included?

- 5. Trustees report – should the solvency be discussed here, and confirmation of insurance (fidelity and personal liability)? Does the report have to discuss if the trustees exceeded any restrictions that were placed on them by the owners?
- 6. Trade Debtors/Levies in advance/arrears and trade payables – is aging necessary? Can this not be an annexure to the financial statements especially if there are a large number of units? Because financials are distributed to all owners, will this not be a name and shame if each unit is listed?
- 7. Does the 10 year maintenance plan need to be covered anywhere in the financials or in the audit?
- 8. Can we prepare financials using Entity Specific criteria?

# CSOS

# The Community Schemes Ombud Services Act

- A large number of commercial and private properties will be affected
- Scheme or arrangement where there is shared use of and responsibility for parts of land and buildings (such as sectional titles, share block companies, home owners' associations, property owners' associations, housing schemes for retired persons, housing co-operatives etc.)
- Levies will be payable to the Ombud Service based on the monthly levy charged per month per unit
- A community scheme pays a levy quarterly to the Ombud Service and receives it from the unit owners in the scheme



# The Community Schemes Ombud Services Act (cont.)

- The quarterly levy is calculated on a sliding scale (2% of the monthly levy) with levies of
  - R500 or less being charged a nil rate and
  - A maximum charge of R40 per month for levies of R2500 or more

# The Community Schemes Ombud Services Act (cont.)

- Must insure against the risk of loss of money belonging to the community scheme
- The minimum amount of the required fidelity insurance cover is the total value of:
  - The community scheme's investments and reserves at the end of its last financial year
  - 25% of the community scheme's operational budget for its current financial year
- A copy of the annual financial statements and any other prescribed document or information must be filed before 31 October each year (Within calendar year of Act becoming effective 7 Oct 2016)

# Administrative Management

# Governance Documents

- The BC must
  - lodge notification of amendments to the Scheme's Rules ASAP (within 10 days after relevant resolution)
  - Compile and keep a complete set of Management and Conduct Rules
  - Prepare a consolidate set of rules whenever they are amended.
- The BC must prepare and update records including records
  - Minutes of meetings
  - List of trustees, members and tenants
  - Lists of sections, exclusive areas, registered bond holders
  - Details of future development rights
  - Any other records required
- The BC must keep all accounting records listed in Rule 28 (3) and make them available for inspection (can charge a fee to copy)
- If BC terminates a contract with employee/managing agent – 10 days to return docs

# Executive Management Agent and managing agents

- May appoint by special resolution
- Members holding 25% may apply to Ombud to appoint Executive Management Agent
  - Professional, additional reporting requirements

# Physical Management

- Improvements to Common Property (Rule 29)
  - Unanimous resolution to make alterations or improvements that is not reasonably necessary
  - BC may propose improvements/alterations that are necessary with 30 days notice of proposal including motivation, estimated costs and plan on meeting costs (special resolution).
- BC (if directed by members resolution)
  - Install separate meters and recover costs
  - Special resolution to install prepaid meters on common property (60 days notice)
    - Don't infringe on constitutional rights
- Use of sections and common property
- Obligation to maintain

# Conduct Rules

- Keeping of animals and pets
- Refuse and waste disposal
- Vehicles
- Damage to common property
- Appearance of section and exclusive use areas
- Storage of flammable materials
- Behaviour of occupiers and visitors in sections and on common property
- Eradication of Pets

**QUESTIONS?**



# Formal Q&A Session

We will now take a **quick comfort break** before we discuss some questions received during the webinar.

Remember: A Q&A summary will also be uploaded to your profile

If you would like to e-mail a question please use:

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participation!**

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