

GLAD



EQUAL JUSTICE UNDER LAW

Canadian Marriage FAQ

What Do I Need to
Know About Getting
Married in Canada?

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800.455-GLAD (4523) or 617.426.1350

Same-sex couples can legally marry in Canada, and Canada has no residency requirement for marriage. Here are some answers to common questions about what this means for Americans.

Can American same-sex couples marry in Canada?

Yes. On July 20, 2005, a law approved by the Canadian Parliament went into effect allowing same-sex couples to marry on an equal basis with different-sex couples in all 13 provinces and territories in Canada.

What do we have to do to get married in Canada?

To marry in Canada, you will need to get a marriage license, find a person authorized to perform the ceremony, and arrange for two witnesses to be present during the ceremony. You can usually find witnesses where you get your license. No medical tests are mandated.

The processes for applying for licenses and having ceremonies are different from region to region. Further, there may be some differences if you are having a religious ceremony rather than a civil ceremony, which your religious officiant should be able to tell you about.

For general information on marriage in the regions, see:

- Alberta: <http://www.servicealberta.gov.ab.ca/542.cfm>
- British Columbia: <http://www.vs.gov.bc.ca/marriage/>
- Manitoba: <http://vitalstats.gov.mb.ca/GettingMarried.html>
- New Brunswick:
http://www2.gnb.ca/content/gnb/en/services/services_renderer.200799.html
- Newfoundland & Labrador:
http://www.gs.gov.nl.ca/birth/getting_married/index.html
- Northwest Territory:
http://www.hlthss.gov.nt.ca/english/services/vital_statistics/marriage_certificate/default.htm
- Nova Scotia:
<http://www.gov.ns.ca/snsmr/access/vitalstats/marriage-licence.asp>

- Nunavut:
http://www.gov.nu.ca/files/vital%20stats%20application_birth_marriage,death_eng.pdf
- Ontario:
http://www.ontario.ca/en/life_events/married/012199.html
- Prince Edward Island:
<http://www.gov.pe.ca/health/index.php3?number=1020364>
- Quebec:
<http://www.justice.gouv.qc.ca/english/publications/generale/maria-a.htm>
- Saskatchewan:
<http://www.isc.ca/VitalStats/Marriages/Pages/Register.aspx>
- Yukon: <http://www.hss.gov.yk.ca/marriage.php>

In all regions, the basic elements to get married include:

Applying for the license

Alberta

Both parties must apply together and provide the local marriage license issuer with the following:

- proof of age (persons under the age of 18 must present a completed consent form)
- proof of divorce (copies of final court documentation) (see below)
- translator/interpreter over the age of 18 if not fluent in English
- if applicant is mentally challenged, issuer must notify trustee or guardian

British Columbia

Either party may appear at the local license issuer and apply for a license, but must provide the following information and documents for both intended spouses:

- a birth certificate or passport
- photo ID

- consent forms filled out by a parent if under 19
- proof of divorce if divorced within the last 31 days (see below)

Manitoba

Both parties must appear in person at the local license issuer to apply for the license and provide the following:

- proof of age (birth certificate or passport)
- proof of divorce (certified final divorce papers) (see below)
- proof of death of previous spouse (death certificate or newspaper clipping)

New Brunswick

Both parties must appear in person before the local license issuer (or a Personal Attendance Excused form must be completed by that person in the presence of a Commissioner of Oaths or Notary Public and filed with the issuer) and provide the following:

- the date of the marriage and who is going to perform it
- proof of identity and age (birth certificate, passport or driver's license)
- written parental consent if under 18 (if under 16 need a declaration from the Court of Queen's Bench)
- proof of divorce (certified final divorce papers) (see below)
- proof of death of previous spouse (death certificate)

Newfoundland and Labrador

Either party may apply in person at a local marriage license issuer, but both must sign the application and each must complete an affidavit and have their signatures witnessed on it by a Commissioner of Oaths, a Justice of the Peace, or a Notary Public. If the application is being completed outside of Newfoundland, signatures must be witnessed by a Notary Public. If the application is being made by only one party, that party must bring the ID for both parties. The marriage license is only valid from 30 days from

the date of issue. The following documents must be provided at the time of application:

- proof of age
- if under 19 must submit a birth certificate or affidavit by father or mother swearing to age and written parental consent
- proof of divorce (certified final divorce papers) (see below)
- if you were divorced outside of Canada, you will be required to provide a letter from a Newfoundland lawyer stating that you are eligible to marry in Newfoundland (see below)

Northwest Territory

Both parties must appear in person at the local license issuer to apply for the license and must provide the following:

- birth certificate
- social insurance number
- full names and place of birth for both sets of parents
- immigration documents (if applicable)
- written parental consent if under 19
- proof of divorce (certified final divorce papers) (see below)
- proof of death of previous spouse (death certificate)

Nova Scotia

Either party may appear at the local deputy issuer of marriage licenses and apply for a license, but must provide the following information and documents for both intended spouses:

- photo ID
- proof of age
- written parental consent if under 19
- proof of divorce (certified final divorce papers) (see below)
- proof of death of previous spouse (death certificate)

Nunavut

Both people planning to get married must attend the appointment with the Marriage License Issuer. You will need to provide the following documents or information:

- birth certificate
- social insurance number
- full names for both sets of parents (including mothers' maiden name)
- place of birth for both sets of parents
- immigration documents (if applicable)
- divorce certificate(s) or decree(s) - (a decree absolute or certificate is required if either person has been divorced, no other documents are acceptable) (see below) and
- death certificate(s) (if either person has been widowed)

Ontario

Both parties must fill out the license application, and either can appear at any city or town hall to submit it, but must provide the following information and documents for both intended spouses:

- birth certificate or passport
- written parental consent if under 18
- proof of divorce if divorced in Canada (certified final proof)
- authorization from Minister of Consumer & Commercial Relations if divorced outside of Canada (see below)

You can download an application for an Ontario marriage license at:

<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&ENV=WWE&NO=007-11018E>. Note that this form is still gendered, in that it requests information about the bride and the bridegroom. It does not ask the parties to designate their sex.

Prince Edward Island (PEI)

Both parties must appear before the local issuer and provide the following information:

- birth certificate or passport
- written parental consent if under 18, under 16 can not marry unless pregnant or a mother

- proof of divorce (certified final proof). If divorced outside Canada need a letter from a PEI lawyer stating that the person is free to marry in PEI (see below)
- death certificate if widowed
- name of person performing the ceremony and date and place of ceremony

Quebec

Both parties must fill out the license application and appear together at an interview with the “Service des Mariages Civils” at the local courthouse along with one witness, and provide the following:

- birth certificate, or sworn statement, passport and ID photo
- written parental consent if under 18
- certified proof of divorce or dissolution of civil union (see below)
- proof of death of previous spouse (death certificate)

For a marriage license application, call the Service in the city or region where you intend to marry or download one: <http://www.justice.gouv.qc.ca/english/formulaires/mariage/sj217-a.pdf>.

Saskatchewan:

Both parties must appear in person (or one party needs to complete the “Non-Attendance Before Issuer Of Marriage Licenses” form) before the local issuer of marriage licenses and provide the following:

- birth certificate
- written parental consent if under 18
- proof of divorce (see below) or annulment (original or certified copy)
- proof of death of previous spouse is not required, but you need to know the exact date and place of death

Yukon

Both parties must appear in person at any city or town hall to apply for the license and provide the following:

- birth certificate or passport
- photo ID
- proof of divorce (see below)

Waiting periods

- *Alberta, British Columbia, New Brunswick, Northwest Territory, Nunavut, Ontario and Prince Edward Island-* no waiting period
- *Manitoba-* 24 hours between issuance of license and ceremony
- *Newfoundland and Labrador-* 4 days between application for and issuance of license and a further 4 day wait between the time the clergy or marriage commissioner receives the license and the ceremony
- *Nova Scotia-* 5 days between application for and issuance of license
- *Quebec-* 20 days between issuance of license and ceremony for purposes of publication of banns, an old tradition that simply entails posting a wedding announcement at the prospective venue for your ceremony. A Court Clerk or your wedding officiant will assist you.
- *Saskatchewan-* 24 hours between issuance of license and ceremony
- *Yukon-* 24 hours between issuance of license and ceremony

Fees

Consult the websites above for the area in Canada where you plan to marry for the fees that are charged for the marriage license,

officiant, and marriage certificate. They vary widely and can range from \$20 to \$250.

What if one of us has been married before?

If either of you has previously been married, you may need to demonstrate that your previous marriage ended in divorce or death.

Divorce

If you are divorced and seeking to marry in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territory, Nova Scotia, Nunavut, Quebec, Saskatchewan or the Yukon, you should provide the original or a court certified copy of your final divorce decree, judgment or certificate of divorce. If the divorce took place in a country other than Canada and the divorce documents are in a foreign language, Nova Scotia and Newfoundland and Labrador require a written translation.

In Newfoundland and Labrador and Prince Edward Island if you were divorced outside Canada, you will be required to provide a letter from a practicing lawyer in that province stating that you are eligible to marry there.

In Ontario, marrying after you've been divorced is more complicated. If you were divorced in Canada, all you need to do is bring the original or a court-certified copy of your final divorce decree, final judgment or a certificate of divorce. If you were divorced outside of Canada, however, you must get an authorization for a marriage license from the Minister of Consumer and Business Services. To do so, you need to send the following materials to the Office of the Registrar General:

- A completed marriage license application signed by both of you;
- A Statement of Sole Responsibility for each divorce signed by both of you. This form states that you both acknowledge that your receipt of a marriage license does not mean that the courts of Ontario will recognize your previous divorce. To

download this form, go to <http://www.cbs.gov.on.ca/mcbs/english/pdf/52ksku.pdf>;

- An original or court-certified copy of your final divorce decree; AND
- A legal opinion from an Ontario lawyer, addressed to both of you, explaining why the divorce or annulment should be recognized in the Province of Ontario. A sample legal opinion letter can be obtained from the Office of the Registrar General by calling (807) 343-7568, or toll free in Ontario at 1-800-461-2156. A sample letter will be faxed to your lawyer. You can get a lawyer referral at http://www.lsuc.on.ca/public/referral_en.jsp.

A marriage license application form, Statement of Sole Responsibility form and a suggested format for a lawyer's opinion letter are also available from most local municipal offices.

Death

If your previous spouse died, you must provide proof of death in Manitoba, New Brunswick, Northwest Territory, Nova Scotia, Nunavut, Quebec, Prince Edward Island and Saskatchewan. New Brunswick, Northwest Territory, Nova Scotia, Nunavut, Prince Edward Island and Quebec require a certified death certificate or other official form of proof. Manitoba will accept either a death certificate or a news clipping. Saskatchewan only requires the date and place of death.

Who is authorized to perform the ceremony?

Couples getting married in Canada can have either a civil or a religious ceremony.

Civil ceremonies

Different civil officials are authorized to perform marriage ceremonies in the different regions (i.e., Marriage Commissioners in Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Northwest Territory, Nunavut, Saskatchewan or the

Yukon; clerks of the Court of Queen's Bench in New Brunswick; a judge or justice of the peace in Nova Scotia or Ontario; judge of the County Court or a prothonotary in Prince Edward Island; clerks from the Service, mayors, notaries, etc. in Quebec). In some regions, it is also possible to have someone designated to perform your ceremony. You can get information about civil officiants when you apply for your marriage license or from the provincial websites.

Religious ceremonies

Any religious representative who is recognized by a religious body to perform marriages, and is registered to perform marriages under the Marriage Act in the region where you want to get married can perform religious ceremonies.

Can I marry a same-sex partner in Canada if I am married to someone else?

Not until you have divorced the other person. Entering into another marriage before you have legally ended the first is bigamy, which is a crime in both the U.S. and Canada.

Can I marry a same-sex partner in Canada if I have a civil union or comprehensive domestic partnership with someone else?

No. Civil unions and comprehensive domestic partnerships (ones that provide essentially all the state rights of a married different-sex couple) are a legal status parallel to marriage under the laws of the state where it was established. If you have joined in a civil union or comprehensive domestic partnership and the relationship is over, you will need to have a dissolution proceeding, failure to do so before marrying in Canada could make you guilty of bigamy.

It is possible to marry the same person with whom you have a civil union or domestic partnership.

Can same-sex couples marry anywhere other than Canada?

Yes, currently Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, New York and the District of Columbia allow same-sex couples to marry and have no residency requirement. GLAD has detailed information about the New England states where same-sex couples can legally marry at <http://www.glad.org/rights/publications/c/marriage/>. For information about getting married in Iowa, the District of Columbia or New York contact Lambda Legal (www.lambdalegal.org).

In addition, the Netherlands, Belgium, Spain, South Africa, Norway, Sweden, Portugal, Iceland, Argentina and Mexico City allow same-sex couples to marry, but some of these countries have requirements that make it difficult for non-citizens to marry. Moreover, you should speak with an attorney about other consequences of marrying outside the country, particularly with regard to potential differences in the treatment and respect of such marriages within the United States.

If my partner and I marry in Canada, will our marriage be respected in the U.S.?

Your Canadian marriage will be respected as a marriage in Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, New York and the District of Columbia, and possibly in Maryland and New Mexico (even though same-sex couples are not able to marry there).

It will be respected as a civil union in New Jersey and Illinois and, beginning January 1, 2012, Delaware, and it will be respected as a domestic partnership in the state of Washington

For more information about marriage recognition about places outside of New England, contact Lambda Legal at 212-809-8585.

There is uncertainty as to how other states will treat the marriage of a same-sex couple. Although states have a strong tradition of recognizing marriages that are legal where they were celebrated (unless the state has strong public policy against the recognition of the marriage),

unfortunately, many states currently do have laws, constitutional provisions or controlling appellate decisions that can be deemed to create a “strong public policy” against recognizing the marriages of same-sex couples.

Even in states that do not respect the marriages of same-sex couples, there is nothing to prevent private parties – e.g., businesses, employers, public accommodations, insurance companies, etc. – from respecting your marriage.

Because of the 1996 federal Defense of Marriage Act (DOMA), currently the federal government does not recognize the marriages of same-sex couples and therefore does not extend to same-sex spouses the more than 1138 federal benefits, protections and responsibilities applicable to spouses in a different-sex marriage. This includes federal taxes, Social Security, immigration, veterans’ benefits and many, many more.

GLAD has filed two federal lawsuits, *Gill et al. v. OPM et al.* and *Pedersen et al. v. OPM et al.*, to challenge Section 3 of DOMA (see www.glad.org/doma for detailed information). Should GLAD succeed in these lawsuits, or should Congress repeal DOMA Section 3, some or all of the federal laws where marriage is relevant will be applicable to married same-sex couples who live in states where their marriage is respected.

What should we do if our marriage is not respected?

Some types of unfair treatment can be the basis of a lawsuit, and other times the unfairness may not be suitable for a court to address. Even when litigation is an option, it is not the only option. It is always essential to weigh the chances of success or failure because bad results in lawsuits can have effects reaching far beyond your particular situation and affecting other families, too. For a further discussion of this see <http://www.glad.org/uploads/docs/publications/make-change-not-lawsuits09.pdf>.

If you feel you have been discriminated against, you should contact GLAD or one of the other LGBT legal organizations. We can help you figure out what options you have to enforce your rights.

Many ways exist to advocate in your home state about why your marriage should be respected. You can work with local marriage equality organizations to educate the public, mobilize supporters, and lobby your state legislature. You can write letters to the editor of your local paper about why your family needs the protections due to your marriage. You can participate in efforts to defeat anti-gay constitutional amendments, legislation, and ballot initiatives on both the state and federal levels. You can share your story by participating in public forums. For more information about these kinds of efforts, contact GLAD.

What should I say when I am asked if I am married?

You are legally married, and you should describe yourself accordingly in almost all instances, such as on applications or forms relating to employment, insurance, credit, mortgages, medical treatment, etc. You should be aware, however, that discriminatory laws and practices still exist in these areas and you may not be afforded the rights of married couples in these areas. If you encounter problems, contact GLAD.

If you are asked on a government form, you may want to specifically indicate that you are married to someone of the same sex, particularly if you know that the governmental entity does not respect marriages between same-sex couples. If you do not, your answer could be considered dishonest or fraudulent, and potentially expose you to fines or other penalties. This is particularly true of government forms relating to taxes, immigration, social security, and other government programs.

Will getting married in Canada allow me to sponsor my spouse for U.S. citizenship?

No. The law stating that the federal government does not respect marriages between same-sex couples applies to immigration. Further, depending on your circumstances, getting married in Canada could even

lead to your spouse's deportation. While this law may be challenged in court, doing so may be very risky, both for your partner who may be deported, and for other same-sex bi-national couples. Before making any decisions about marriage, consult a qualified immigration attorney who is knowledgeable about LGBT issues for individualized advice about your situation. For more information see GLAD's publication, *Warning for Same-Sex Binational Couples*, at:

http://www.glad.org/uploads/docs/publications/Binational_Couples_Immigration_Warning.pdf.

You should also be aware that legislation to allow U.S. citizens and permanent residents to sponsor their same-sex partners for immigration to the U.S. has been introduced in Congress. For more information about the Uniting American Families Act or to work for its passage, contact Immigration Equality (www.immigrationequality.org).

If my partner and I marry in Canada, how should we file our taxes?

Federal Income Taxes

In light of the federal marriage restriction (DOMA), the federal government will not consider a same-sex couple married for purposes of federal income taxes. As a result, each member of a same-sex couple married in Canada must file singly, but should strongly consider designating in some way that the marriage has occurred. Doing so could help to avoid penalties for underpaying taxes and could also prevent others from using the designation of "single" on the tax return to argue or prove that a person is not really married when that issue arises in other legal contexts.

In order to acknowledge both the discriminatory federal law as well as the truth of your marriage, accountants suggest two options:

1. Include a cover letter or disclosure form with the tax return. This form allows a taxpayer to highlight issues raised by the return to the IRS. It could include a statement that the taxpayer was married in Canada (and the marriage certificate

could be attached as well), and that the only reason he or she is filing as a single person is because of the federal marriage restriction (DOMA).

2. On the tax return itself, put an asterisk by the “x” in the “single” box, and indicate somewhere on the form that the taxpayer was married in Canada on a particular date and that this designation of “single” is for federal income tax purposes only.

Filing in this way (i.e. either with a disclosure or an asterisk) could be crucial for purposes of proving (or not disproving) the existence of the marriage in the numerous non-tax-related ways tax returns are used (i.e. applying for a mortgage).

State Income Taxes

How couples married in Canada should file taxes in their home state depends on the way the state tax law is structured, as well as the existence or non-existence of a state marriage restriction. There are essentially three different kinds of states with regard to the filing of state income taxes:

1. Those in which state filing status is tied to federal filing status, whether or not the state has its own marriage restriction.
2. Those in which state filing status is not tied to federal status, but have a marriage restriction prohibiting respect for marriages between same-sex couples entered into elsewhere.
3. Those in which state filing status is not tied to federal status and there is no DOMA.

For the first category of states, it is likely that the rule tying state filing status to federal filing status is binding and thus the federal DOMA is incorporated into state law. It is not clear if this is true in all circumstances, and it is crucial to consult with a tax attorney or CPA in your state.

For states with their own marriage restrictions, married couples have the same options with regard to their state income tax forms as with regard to the federal. (See above).

For the third category of states, a couple fills out two federal forms. One designates the individual as single to submit to the IRS; the other is completed listing the taxpayers as a couple (either filing jointly or separately) in order to calculate their income for purposes of a state return, which they file under the rates and obligations for married persons.

For specific information about each of the New England states see GLAD's publication, *Navigating Income Taxes for Married Same-Sex Couples*, at:

<http://www.glad.org/uploads/docs/publications/navigating-taxes-married-couples.pdf>.

The bottom line on all tax matters is that legal experts are working hard to come up with clearer answers to these questions, but there are risks involved in many of the options people have come up with. Before making a decision about this issue, you should consult a tax attorney or an accountant to consider your specific situation and weigh the legal and financial risks involved.

If we get married in Canada, how does that affect our children?

To the extent that the parents' marriage benefits their children, the children of gay and lesbian parents will gain from their parents' marriage as well. Family life will go on the same as before you were married, but your children will have the additional security that comes from having married parents. And for the first time, they will be able to tell their friends and classmates that their parents are married rather than getting into difficult explanations.

As to the parents' legal status as parents, if both persons were parents before (through a joint or second-parent adoption, for example), they will remain so. If one person is in limbo regarding his or her legal rights as a parent, getting married won't change that. By marrying, the person

who is not presently a legal parent will likely be considered a “stepparent” by virtue of the marriage, but that status usually (but not always) carries little legal weight. In most states, the marriage by itself does not make a person a guardian or legal parent. To establish a legal relationship between a person and a child, one needs to obtain a court decree stating that you are both legal parents.

If two people have children together after they marry, depending on whether and how a person’s home state regards the marriage, both marital partners may be legally presumed to be the legal parents of the children born to either. Because this presumption can be rebutted in a court proceeding by proof that someone else is the child’s biological parent, however, the non-biological parent should consider adopting the child in order to protect him or herself and the child from later attempts to disprove the presumed parental status of the non-biological parent.

- *Miller-Jenkins Sidebar*

Relying on a partner’s good will, or even on the fact that a child was born into a marriage or civil union, is not the best way to ensure ongoing parental rights of both parents if a couple later separates. A case in point is *Miller-Jenkins v. Miller-Jenkins*. This case has been in litigation since 2004, has involved two state Supreme Courts (Vermont and Virginia), and has already made several trips to the U.S. Supreme Court. Proceedings are ongoing.

In that case, Janet and Lisa had a child, Isabella, while they were in a civil union. Janet did not adopt. After the couple separated, Lisa moved to Virginia and used both the lack of an adoption, and Virginia’s laws hostile to same-sex relationships to thwart Janet’s contact with their daughter. Finally, however, the Virginia courts agreed that the Vermont courts had the authority to make custody and visitation decisions.

After many attempts to get Lisa to allow Janet visitation rights, in November, 2009, the Vermont Family Court issued an order granting Janet responsibility for the day-to-day care of Isabella while granting Lisa liberal visitation rights. The transfer of custody was to have taken place on January 1, 2010. However, Lisa failed

to appear at the appointed time, and an arrest warrant was issued. Lisa and Isabella still have not been found.

GLAD and local counsel represent Janet in the Vermont proceedings. For more information, go to:

<http://www.glad.org/work/cases/miller-jenkins-v-miller-jenkins/>.

Will getting married in Canada affect my eligibility for public benefits or for continuing alimony from a prior marriage?

Yes. If you are legally married, it is possible that your spouse's income will be taken into account in calculating whether you are eligible for public benefits. Although it would be outrageously unfair, you should plan on this being true even if your marriage is not respected for other purposes. It is also possible that you will no longer be entitled to alimony from a prior marriage.

What happens if we break up?

The only way to end a marriage is through divorce. To get divorced in Canada, at least one partner must reside there for one year before a Canadian court will have jurisdiction to grant the divorce, even though there is no similar residency requirement to get married there. Unless you live in a state that recognizes your marriage, trying to obtain a divorce will likely be difficult. If you live in a state that does not honor your marriage, the state courts will also be unlikely to grant you a divorce, and all the states that would honor your marriage have a residency requirement to divorce. To make things more complicated, even if you are unable to obtain a legal divorce, you may still be held responsible for the obligations of marriage, such as providing financial support and being held responsible for your ex's debts. This difficulty is yet another reason why couples should think very carefully before traveling to Canada to marry.

Gay & Lesbian Advocates & Defenders (GLAD) is the leading legal rights organization in New England dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Through impact litigation, education and public policy work, GLAD seeks to create a better world that respects and celebrates diversity—a world in which there is equal justice under law for all.

GLAD's Legal InfoLine and publications are provided *free of charge* to all who need them. We hope that those who are able will make a contribution to ensure that GLAD can continue the fight for equal justice under the law.

To make a tax-deductible contribution, log on to www.glad.org, or call us at (800) 455-GLAD (4523) with your credit card, or mail your check, payable to GLAD to 30 Winter Street, Suite 800, Boston, MA 02108. If your workplace has a matching gift program, please be sure to have your donation matched. Please contact us if you would like more information on becoming a GLAD partner.

Thank You!



GLAD



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