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PART VI

CONVERSIONS TO CONDOMINIUM

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718.604 Short title.—This part shall be known and may be cited as the “Roth Act” in memory of Mr. James S. Roth, Director, Division of Florida Land Sales and Condominiums, 1979-1980.

History.—s. 1, ch. 80-3.

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718.606 Conversion of existing improvements to condominium; rental agreements.—When existing improvements are converted to ownership as a residential condominium:

(1)(a) Each residential tenant who has resided in the existing improvements for at least the 180 days preceding the date of the written notice of intended conversion shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 270 days after the date of the notice. If the rental agreement expires more than 270 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(b) Each other residential tenant shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 180 days after the date of the written notice of intended conversion. If the rental agreement expires more than 180 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(2)(a) In order to extend the rental agreement as provided in subsection (1), a tenant shall, within 45 days after the date of the written notice of intended conversion, give written notice to the developer of the intention to extend the rental agreement.

(b) If the rental agreement will expire within 45 days following the date of the notice, the tenant may remain in occupancy for the 45-day decision period upon the same terms by giving the developer written notice and paying rent on a pro rata basis from the expiration date of the rental agreement to the end of the 45-day period.

(c) The tenant may extend the rental agreement for the full extension period or a part of the period.

(3) After the date of a notice of intended conversion, a tenant may terminate any rental agreement, or any extension period having an unexpired term of 180 days or less, upon 30 days' written notice to the developer. However, unless the rental agreement was entered into, extended, or renewed after the effective date of this part, the tenant may not unilaterally terminate the rental agreement but may unilaterally terminate any extension period having an unexpired term of 180 days or less upon 30 days' written notice.

(4) A developer may elect to provide tenants who have been continuous residents of the existing improvements for at least 180 days preceding the date of the written notice of intended conversion and whose rental agreements expire within 180 days of the date of the written notice of intended conversion the option of receiving in cash a tenant relocation payment at least equal to 1 month's rent in consideration for extending the rental agreement for not more than 180 days, rather than extending the rental agreement for up to 270 days.

(5) A rental agreement may provide for termination by the developer upon 60 days' written notice if the rental agreement is entered into subsequent to the delivery of the written notice of intended conversion to all tenants and conspicuously states that the existing improvements are to be converted. No other provision in a rental agreement shall be enforceable to the extent that it purports to reduce the extension period provided by this section or otherwise would permit a developer to terminate a rental agreement in the event of a conversion. This subsection applies to rental agreements entered into, extended, or renewed after the effective date of this part; the termination provisions of all other rental agreements are governed by the provisions of s. 718.402(3), Florida Statutes 1979.

(6) Any provision of this section or of the rental agreement or other contract or agreement to the contrary notwithstanding, whenever a county, including a charter county, determines that there exists within the county a vacancy rate in rental housing of 3 percent or less, the county may adopt an

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ordinance or other measure extending the 270-day extension period described in paragraph (1)(a) and the 180-day extension described in paragraph (1)(b) for an additional 90 days, if:

(a) Such measure was duly adopted, after notice and public hearing, in accordance with all applicable provisions of the charter governing the county and any other applicable laws; and

(b) The governing body has made and recited in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

A county ordinance or other measure adopting an additional 90-day extension under the provisions of this section is controlling throughout the entire county, including a charter county, where adopted, including all municipalities, unless a municipality votes not to have it apply within its boundaries.

History.—s. 1, ch. 80-3; s. 20, ch. 84-368.

718.608 Notice of intended conversion; time of delivery; content.—

(1) Prior to or simultaneous with the first offering of individual units to any person, each developer shall deliver a notice of intended conversion to all tenants of the existing improvements being converted to residential condominium. All such notices shall be given within a 72-hour period.

(2)(a) Each notice of intended conversion shall be dated and in writing. The notice shall contain the following statement, with the phrases of the following statement which appear in upper case printed in conspicuous type:

These apartments are being converted to condominium by (name of developer) , the developer.

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 180 days, you may extend your rental agreement for up to 180 days after the date of this notice.

c. **IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE DATE OF THIS NOTICE.**

2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS, you may extend your rental agreement for up to 45 days after the date of this notice while you decide whether to extend your rental agreement as explained above. To do so, you must notify the developer in writing. You will then have the full 45 days to decide whether to extend your rental agreement as explained above.

3. During the extension of your rental agreement you will be charged the same rent that you are now paying.

4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION OF THE RENTAL AGREEMENT AS FOLLOWS:

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a.If your rental agreement began or was extended or renewed after May 1, 1980, and your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may cancel your rental agreement upon 30 days' written notice and move. Also, upon 30 days' written notice, you may cancel any extension of the rental agreement.

b.If your rental agreement was not begun or was not extended or renewed after May 1, 1980, you may not cancel the rental agreement without the consent of the developer. If your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may, however, upon 30 days' written notice cancel any extension of the rental agreement.

5.All notices must be given in writing and sent by mail, return receipt requested, or delivered in person to the developer at this address: (name and address of developer) .

6.If you have continuously been a resident of these apartments during the last 180 days:

a.You have the right to purchase your apartment and will have 45 days to decide whether to purchase. If you do not buy the unit at that price and the unit is later offered at a lower price, you will have the opportunity to buy the unit at the lower price. However, in all events your right to purchase the unit ends when the rental agreement or any extension of the rental agreement ends or when you waive this right in writing.

b.Within 90 days you will be provided purchase information relating to your apartment, including the price of your unit and the condition of the building. If you do not receive this information within 90 days, your rental agreement and any extension will be extended 1 day for each day over 90 days until you are given the purchase information. If you do not want this rental agreement extension, you must notify the developer in writing.

7.If you have any questions regarding this conversion or the Condominium Act, you may contact the developer or the state agency which regulates condominiums: The Division of Florida Condominiums, Timeshares, and Mobile Homes, (Tallahassee address and telephone number of division) .

(b)When a developer offers tenants an optional tenant relocation payment pursuant to s. 718.606(4), the notice of intended conversion shall contain a statement substantially as follows:

If you have been a continuous resident of these apartments for the last 180 days and your lease expires during the next 180 days, you may extend your rental agreement for up to 270 days, or you may extend your rental agreement for up to 180 days and receive a cash payment at least equal to 1 month's rent. You must make your decision and inform the developer in writing within 45 days after the date of this notice.

(c)When the rental agreement extension provisions of s. 718.606(6) are applicable to a conversion, subparagraphs 1.a. and b. of the notice of intended conversion shall read as follows:

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a.If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 360 days, you may extend your rental agreement for up to 360 days after the date of this notice.

b.If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

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(3) Notice of intended conversion may not be waived by a tenant unless the tenant's lease conspicuously states that the building is to be converted and the other tenants residing in the building have previously received a notice of intended conversion.

(4) Upon the request of a developer and payment of a fee prescribed by the rules of the division, not to exceed \$50, the division may verify to a developer that a notice complies with this section.

(5) Prior to delivering a notice of intended conversion to tenants of existing improvements being converted to a residential condominium, each developer shall file with the division and receive approval of a copy of the notice of intended conversion. Upon filing, each developer shall pay to the division a filing fee of \$100.

History.—s. 1, ch. 80-3; s. 9, ch. 85-60; s. 9, ch. 86-175; s. 21, ch. 91-103; s. 5, ch. 91-426; s. 54, ch. 2008-240.

718.61 Notices.—

(1) All notices from tenants to a developer shall be deemed given when deposited in the United States mail, addressed to the developer's address as stated in the notice of conversion, and sent postage prepaid, return receipt requested, or when personally delivered in writing by the tenant to the developer at such address. The date of a notice is the date when it is mailed or personally delivered by the tenant.

(2) All notices from developers to tenants shall be deemed given when deposited in the United States mail, addressed to the tenant's last known residence, which may be the address of the property subject to the rental agreement, and sent by certified or registered mail, postage prepaid. The date of a notice is the date when it is mailed to the tenant.

History.—s. 1, ch. 80-3.

718.612 Right of first refusal.—

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. 718.614, and the disclosure documents required by ss. 718.503 and 718.504. The failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion will automatically extend the rental agreement, any extension of the rental agreement provided for in s. 718.606, or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer. The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the tenant shall have no additional right of first refusal. As used in this paragraph, the term "offer" includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but does not include a transaction involving the sale of more than one unit to one purchaser.

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(2) Prior to closing on the sale of the unit, a tenant alleging a developer's violation of paragraph (1)(c) may bring an action for equitable or other relief, including specific performance. Subsequent to closing, the tenant's sole remedy for such a violation will be damages. In addition to any damages otherwise recoverable by law, the tenant is entitled to an amount equal to the difference between the price last offered in writing to the tenant pursuant to this section and the price at which the unit was sold to a third party, plus court costs and attorney's fees.

(3) It is against the public policy of this state for any developer to seek to enforce any provision of any contract which purports to waive the right of a purchasing tenant to bring an action for specific performance.

(4) A tenant's right of first refusal terminates upon:

(a) The termination of the rental agreement and all extensions thereof;

(b) Waiver of the right in writing by the tenant, if the waiver is executed subsequent to the date of the notice of intended conversion. A tenant who waives the right of first refusal waives the right to receive the purchase materials; or

(c) The running of the tenant's 45-day right of first refusal and the additional 10-day period provided for by paragraph (1)(c), if applicable.

History.—s. 1, ch. 80-3; s. 478, ch. 81-259; s. 21, ch. 84-368; s. 873, ch. 97-102.

718.614 Economic information to be provided.—The developer shall distribute to tenants having a right of first refusal, if any:

(1) Information in summary form regarding mortgage financing; estimated down payment; alternative financing and down payments; monthly payments of principal, interest, and real estate taxes; and federal income tax benefits.

(2) Any other information which the division publishes and by rule determines will assist tenants in making a decision and which the division makes available to the developer.

History.—s. 1, ch. 80-3; s. 10, ch. 85-60; s. 13, ch. 94-350.

718.616 Disclosure of condition of building and estimated replacement costs and notification of municipalities.—

(1) Each developer of a residential condominium created by converting existing, previously occupied improvements to such form of ownership shall prepare a report that discloses the condition of the improvements and the condition of certain components and their current estimated replacement costs as of the date of the report.

(2) The following information shall be stated concerning the improvements:

(a) The date and type of construction.

(b) The prior use.

(c) Whether there is termite damage or infestation and whether the termite damage or infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, an inspection report by a certified pest control operator.

(3)(a) Disclosure of condition shall be made for each of the following components that the existing improvements may include:

1. Roof.

2. Structure.
3. Fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool.
9. Seawalls, pilings, and docks.
10. Pavement and concrete, including roadways, walkways, and parking areas.
11. Drainage systems.
12. Irrigation systems.

(b) For each component, the following information shall be disclosed and substantiated by attaching a copy of a certificate under seal of an architect or engineer authorized to practice in this state:

1. The age of the component as of the date of the report.
2. The estimated remaining useful life of the component as of the date of the report.
3. The estimated current replacement cost of the component as of the date of the report,

expressed:

- a. As a total amount; and
- b. As a per-unit amount, based upon each unit's proportional share of the common

expenses.

4. The structural and functional soundness of the component.

(c) Each unit owner and the association are third-party beneficiaries of the report.

(d) A supplemental report shall be prepared for any structure or component that is renovated or repaired after completion of the original report and prior to the recording of the declaration of condominium. If the declaration is not recorded within 1 year after the date of the original report, the developer shall update the report annually prior to recording the declaration of condominium.

(e) The report may not contain representations on behalf of the development concerning future improvements or repairs and must be limited to the current condition of the improvements.

(4) If the proposed condominium is situated within a municipality, the disclosure shall include a letter from the municipality acknowledging that the municipality has been notified of the proposed creation of a residential condominium by conversion of existing, previously occupied improvements and, in any county, as defined in s. 125.011(1), acknowledging compliance with applicable zoning requirements as determined by the municipality.

History.—s. 1, ch. 80-3; s. 22, ch. 84-368; s. 14, ch. 94-350; s. 40, ch. 95-274; s. 5, ch. 96-396; s. 7, ch. 97-301; s. 9, ch. 2007-80.

718.618 Converter reserve accounts; warranties.—

(1) When existing improvements are converted to ownership as a residential condominium, the developer shall establish converter reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the converter reserve accounts in amounts calculated as follows:

(a) 1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s.

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718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2.The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3.The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

Roof Type	Numerator	Denominator
a. Built-up roof without insulation	4	5
b. Built-up roof with insulation	4	5
c. Cement tile roof	45	50
d. Asphalt shingle roof	14	15
e. Copper roof		
f. Wood shingle roof	9	10
g. All other types	18	20

(b)The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years, rounded to the nearest whole year. The amount of converter reserves to be funded by the developer for each structure or component shall be based on the age of the structure or component as disclosed in the inspection report. The architect or engineer shall determine the age of the component from the later of:

1.The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2.The date when the installation or construction of the existing component or structure was completed.

(c)When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1.The date of the replacement or renewal; and

2.That the replacement or renewal at least met the requirements of the then-applicable building code.

(d)In addition to establishing the reserve accounts specified above, the developer shall establish those other reserve accounts required by s. 718.112(2)(f), and shall fund those accounts in accordance with the formula provided therein. The vote to waive or reduce the funding or reserves required by s. 718.112(2)(f) does not affect or negate the obligations arising under this section.

(2)(a)The developer shall fund the reserve account required by subsection (1), on a pro rata basis upon the sale of each unit. The developer shall deposit in the reserve account not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership of the

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common elements allocable to the unit sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding. For the purposes of this subsection, a unit is considered sold when a fee interest in the unit is transferred to a third party or the unit is leased for a period in excess of 5 years.

(b)When an association makes an expenditure of converter reserve account funds before the developer has sold all units, the developer shall make a deposit in the reserve account. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such unit had the unit been sold. Such deposit may be reduced to the extent the developer has funded the reserve account in excess of the minimum reserve account funding required by this subsection. This paragraph applies only when the developer has funded reserve accounts as provided by paragraph (a).

(3)The use of reserve account funds, as provided in this section, is limited as follows:

(a)Reserve account funds may be spent prior to the assumption of control of the association by unit owners other than the developer; and

(b)Reserve account funds may be expended only for repair or replacement of the specific components for which the funds were deposited, unless, after assumption of control of the association by unit owners other than the developer, it is determined by three-fourths of the voting interests in the condominium to expend the funds for other purposes.

(4)The developer shall establish the reserve account, as provided in this section, in the name of the association at a bank, savings and loan association, or trust company located in this state.

(5)A developer may establish and fund additional converter reserve accounts. The amount of funding shall be the product of the estimated current replacement cost of a component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which is the age of the component in years and the denominator of which is the total estimated life of the component in years.

(6)A developer makes no implied warranties when existing improvements are converted to ownership as a residential condominium and reserve accounts are funded in accordance with this section. As an alternative to establishing such reserve accounts, or when a developer fails to establish the reserve accounts in accordance with this section, the developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended. The warranty shall be for a period beginning with the notice of intended conversion and continuing for 3 years thereafter, or the recording of the declaration to condominium and continuing for 3 years thereafter, or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(a)The warranty provided for in this section is conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(b)The warranty shall inure to the benefit of each owner and successor owner.

(c)Existing improvements converted to residential condominium may be covered by an insured warranty program underwritten by an insurance company authorized to do business in this state, if such warranty program meets the minimum requirements of this chapter. To the degree that the warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

(7)When a developer desires to post a surety bond, the developer shall, after notification to the buyer, acquire a surety bond issued by a company licensed to do business in this state, if such a bond is

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readily available in the open market, in an amount which would be equal to the total amount of all reserve accounts required under subsection (1), payable to the association.

(8)The amended provisions of this section do not affect a conversion of existing improvements when a developer has filed a notice of intended conversion and the documents required by s. 718.503 or s. 718.504, as applicable, with the division prior to the effective date of this law, provided:

- (a)The documents are proper for filing purposes.
- (b)The developer, not later than 6 months after such filing:
 - 1.Records a declaration for such filing in accordance with part I.
 - 2.Gives a notice of intended conversion.

(9)This section applies only to the conversion of existing improvements where construction of the improvement was commenced prior to its designation by the developer as a condominium. In such circumstances, s. 718.203 does not apply.

(10)A developer who sells a condominium parcel that is subject to this part shall disclose in conspicuous type in the contract of sale whether the developer has established converter reserve accounts, provided a warranty of fitness and merchantability, or posted a surety bond for purposes of complying with this section.

History.—s. 1, ch. 80-3; s. 23, ch. 84-368; s. 20, ch. 90-151; s. 22, ch. 91-103; s. 5, ch. 91-426; s. 15, ch. 94-350; s. 2, ch. 2006-145; s. 10, ch. 2007-80.

718.62 Prohibition of discrimination against nonpurchasing tenants.—When existing improvements are converted to condominium, tenants who have not purchased a unit in the condominium being created shall, during the remaining term of the rental agreement and any extension thereof, be entitled to the same rights, privileges, and services that were enjoyed by all tenants prior to the date of the written notice of conversion and that are granted, offered, or provided to purchasers.

History.—s. 1, ch. 80-3.

718.621 Rulemaking authority.—The division is authorized to adopt rules pursuant to the Administrative Procedure Act to administer and ensure compliance with developers' obligations with respect to condominium conversions concerning the filing and noticing of intended conversion, rental agreement extensions, rights of first refusal, and disclosure and postpurchase protections.

History.—s. 8, ch. 98-195.

718.622 Saving clause.—

(1)All notices of intended conversion given subsequent to the effective date of this part shall be subject to the requirements of ss. 718.606, 718.608, and 718.61. Tenants given such notices shall have a right of first refusal as provided by s. 718.612.

(2)The disclosure provided by s. 718.616 and required by ss. 718.503 and 718.504 to be furnished to each prospective buyer or lessee for a period of more than 5 years shall be provided to any such person who has not, prior to May 1, 1980, been furnished the documents, prospectus, or offering circular required by ss. 718.503 and 718.504.

(3)The provisions of s. 718.618 do not affect a conversion of existing improvements when a developer has filed with the division prior to May 1, 1980, provided:

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(a)The documents are proper for filing purposes; and

(b)The developer, not later than 6 months after such filing:

1.Records a declaration for such filing in accordance with part I of this chapter, and

2.Gives a notice of intended conversion.

History.—s. 13, ch. 80-3.