

## **PART I: BEGINNING THE DIVORCE PROCESS**

### *a. Where To Start*

As noted earlier, this guide is not a substitute for individualized guidance. One of the best first steps in the divorce process is reaching out for support and advice. We recommend seeking advice from professionals familiar with both civil and Jewish divorce systems. Otherwise, you may receive conflicting advice, which can ultimately make the process longer and more complicated.

If you are unsure to whom or to where to turn, calling ORA's helpline, OSF (One Step Forward), is a great first step. OSF provides support, guidance, and resources to anyone going through the Jewish divorce process and can get you in touch with the appropriate people to guide you. Additionally, ORA has a resource database on its website which can provide helpful information.

### *b. What Needs To Be Figured Out?*

#### **1. Introduction**

There are three main areas that need to be addressed in a divorce:

- (1) The Jewish Divorce: This is the *Get*; the piece that makes you divorced under Jewish law.
- (2) The Civil Divorce: This is the divorce you will receive through the state; the piece that makes you divorced in the eyes of American law.
- (3) The Substantive Issues: This refers to the many areas that need to be addressed in a divorce, such as the division of property, custody arrangement(s), and determining financial support. You'll likely need to deal with all three—and that can feel like a lot. But by taking things one issue at a time, the path becomes clearer.

#### **2. The Jewish Divorce**

Just like there is a *halachic* (Jewish legal) process for marriage, there is a *halachic* process for divorce. Even if you have separated from your husband and even if you are civilly divorced from him, the *halacha* will recognize you as married to each other until you receive a *get* from him. It is important for any Jewish couple separating to prioritize giving the *get*. Without a *get*, you are not divorced and cannot remarry in a Jewish ceremony. Furthermore, any

future children you have will be considered *mamzerim* (plural for *mamzer*). (*Mamzer* is the term used to describe a child born out of certain forbidden unions; a *mamzer* is restricted by *halacha* from marrying a non-*mamzer*.) The *get* process itself is short and will be discussed in Part II.

The *get* can be conducted at various points in the divorce process, as long as the couple is living separately. **We recommend resolving the *get* as early in the process as possible to avoid the risk of the *get* being used as extortion in any negotiations.** Furthermore, at the early stages of a divorce, it is often difficult to predict how acrimonious the divorce will end up being. By addressing the *get* in the beginning, we avoid the risk of the divorce becoming more contentious and the *get* being withheld as a form of leverage or revenge. Signing a *halachic* prenup before marrying may prevent these issues from arising in the first place. The *halachic* prenup is different from a civil prenup. If you signed a *halachic* prenup, see Part 1, Section D2.

### 3. The American Civil Divorce

If you are married under American law (i.e., you have filed for a civil marriage in the United States), you must also file for a civil divorce. It is important to note that the civil divorce has no bearing on *halachic* divorce, and the latter is still necessary. Similarly, if you receive a *get*, you will still need to end the civil marriage in order to be recognized as divorced under American law.

If you share children and have lived together but are not civilly married, speak to an attorney in your area regarding what steps to take.

#### American civil divorce involves:

- Hiring a family law attorney who will file legal documents with the state
- Negotiating a settlement agreement through mediation, arbitration, or in court
- Arranging for the Writ of Divorce, i.e. the official legal divorce

If you are not legally married but lived together or have children together, civil legal issues may still apply. Consult a family law attorney to understand your rights and obligations.

### 4. The Substantive Issues

There are typically two main categories of issues that must be resolved in a divorce: (1) Property and Support and (2) Custody and Visitation. While most divorcing couples will need some sort of property resolution, custody and visitation will only apply to couples who share children in the relationship.

### *(1) Property and Support*

Property and support is essentially the question of “who gets what?” in a divorce. When a couple lives together and shares finances, there are many items that must be divided at the end of a relationship. These may include larger assets, such as a home or a car, and smaller items, such as furniture and jewelry. Some of these items have significant financial value while others may have sentimental value, making the process of dividing property very complicated. In addition, items like bank accounts, retirement savings accounts, and pensions must be identified and divided. This is even applicable to couples in poor financial situations, since debt is often divided at the end of a marriage as well. In addition, while a longer marriage often means more complicated property division, this issue still comes up in shorter marriages, where former spouses may disagree on who will keep things like wedding presents, newly-purchased furniture, engagement and wedding jewelry, and more.

The laws governing who is entitled to what at the conclusion of a marriage are complex and vary from state to state. For this reason, you should obtain legal advice from a family law attorney licensed to practice in the state or jurisdiction where you are divorcing. We will discuss more about the process itself below.

The second area to resolve under property is that of support. In many cases, if one spouse earned more money in the marriage than the other, the spouse with more resources must pay support to the spouse with fewer resources. Spousal support (also referred to as maintenance, or various other terms in various states) is more commonly ordered for longer marriages, but this can vary. Again, you must obtain legal guidance specific to your state to understand if this applies to you.

### *(2) Custody and Visitation*

The second major area of divorce to resolve is what will happen to the children involved, if any; this area is referred to as custody and visitation. Custody consists of two different components: 1) physical custody and 2) legal custody. Physical custody deals with where the children will physically live and which parent will care for them; legal custody refers to decision-making, indicating which parent will choose the children’s schools and camps and make medical decisions for the children, if needed. Both physical and legal custody can be “sole,” meaning

only one parent will reside with the child or make decisions for them, or “joint,” meaning that both parents will share that role.

While courts generally determine custody according to the legal standard of what is in “the best interests of the child,” the specific understanding of what that means varies from state to state. Therefore, we again strongly advise readers to seek legal guidance specific to the state in which they are living in and divorcing in. This is particularly important at the beginning of a case, as “status quo,” or what is happening on the ground, is a significant factor in custody decisions.

While custody relates to overall living arrangements and decision-making, visitation refers to the overall parenting schedule. For instance, a parent could not have physical or legal custody, but still see their children on visits. In some cases, visits may be supervised by a social worker, family member, or therapist in response to concerns about how the parent interacts with the child. We again urge you to seek specific guidance for your case in your state.

*c. Where Do I Go?*

## **1. Introduction**

Now that we have discussed the primary issues needed to be resolved in a divorce, we can get to the next question: where to go to make these decisions.

The substantive issues in a divorce can be addressed in a variety of ways. If a couple is able to sit down and work out an agreement everyone is comfortable with, they can file an uncontested divorce indicating how the substantive issues will be resolved. However, many couples are too angry with one another to address the issues on their own. In these situations, couples will use a few different formats to figure out the elements of the divorce. These include:

- (1) Mediation
- (2) Litigation
- (3) Arbitration/ *Beit Din*

We will briefly discuss each option below. Because divorces vary so much based on both local laws and the specifics of each situation, we again suggest seeking advice particular to your case.

### *(1) Mediation*

Mediation is a process whereby a trained facilitator helps a divorcing couple come to an agreement on the substantive issues to be resolved. There are many benefits of mediation, including the fact that when successful, it is generally a cheaper and faster process than litigation, and also much less conflict-oriented. Divorce settlements reached through mediation are also more likely to be followed by both parties. However, mediation is not for everyone. First, mediation is a voluntary process, so if one party wants to mediate and the other refuses, the process will stop at that point. Second, mediation is generally considered inappropriate for those leaving abusive marriages, as it can be difficult to balance the power in the room when there is a history of controlling behavior. For former spouses that do agree to mediate, many mediators require each party to consult with an attorney before signing a final agreement.

## (2) Litigation

Litigation is the process of addressing a divorce through the American court system. The legal process in the United States is considered to be adversarial, meaning there are two parties on opposite sides and a judge making final decisions. If a divorcing couple cannot come to an agreement on what should be done with the substantive issues, a court may resolve them by making decisions. It is also common for cases in American courts to be resolved by negotiation through each party's attorneys. This can happen at any point in the process, even right before a trial begins.

There are benefits to using the American court system, particularly because judges have the power to enforce their rulings by removing funds from a person's bank account, or even imprisoning someone who is refusing to cooperate with the courts. On the other hand, the litigation process can take years and is often extremely expensive. In addition, because litigation is a conflict-oriented process, it may make it more challenging for the parties to work together effectively later on, which is a necessary part of joint parenting. There may also be Jewish law-related factors at play, which we will discuss further below.

### **Note on Civil Court Proceedings:**

According to Jewish law, it is generally considered a transgression (*issur arka'ot*) for two Jewish parties to litigate against one another in civil court without prior permission from a *beit din*. In some cases, a *beit din* may issue a *heter arka'ot* (permission to proceed in civil court) when appropriate. Each case is unique, and individuals should consult both a qualified rabbi and their legal counsel to determine the proper venue for their specific situation.

If you find yourself proceeding with the litigation process but cannot afford it, there are resources that can provide free legal assistance, which can be found in the resources section.

### (3) Arbitration/ Beit Din

A third method of resolving substantive issues is through arbitration in a *beit din* (a religious court). Similar to a court, a *beit din* will make decisions on key issues if the former couple cannot come to an agreement.

Under traditional Jewish law, disputes between parties should be resolved in a religious court when possible. As with each process, there can be benefits to resolving a case in *beit din*, since the cost is sometimes lower than in litigation and the court can provide increased cultural sensitivity to the needs of religious couples.

It is important to note that, from a Jewish law perspective, it is viewed as a transgression to litigate a case in civil court, so that if one party wants to arbitrate all divorce issues in *beit din* and the other party insists upon litigating in civil court, there may be consequences that are imposed by the *beit din*, including the possible issuance of a *seruv* upon the party who refuses to litigate before the *beit din*.

If you signed the optional section of the Rabbinical Council of America (RCA)'s *halachic* prenup, you have already selected the *beit din* you will be using in case of a divorce. The name of the *beit din* can be found on the *halachic* prenup document. If you signed the optional section, you must use the *beit din* agreed to in the Halachic prenup, or otherwise you may risk invalidating the entire halachic prenup.

Please keep in mind that while *Batei Din* may suggest settlements, it is your decision as to whether you would like to agree to these agreements. You can always have an attorney look over the agreement before settling.

If you signed the RCA's Halachic Prenup, you should contact the *beit din* listed on the prenup when beginning the divorce process.

## 2. Forum Selection

Figuring out which forum is the right one for your case is one of the most challenging parts of a Jewish divorce. ORA often supports individuals in choosing the right *beit din* for their case, and we can help with that process.

The *get* must be dealt with in a *beit din*, the civil divorce must be dealt with in civil court, and there are various forums to go to for the resolution of substantive issues. In many cases, individuals will need to engage with both the civil and Jewish systems for various needs. Which area of divorce you should deal with first may depend on various circumstances surrounding your divorce. As always, this is something you should discuss with someone knowledgeable in the Jewish and civil divorce process who also knows your circumstances.

Determining the timing of the *get* is a complex question, and will vary in each situation. Receiving your *get* early on ensures that there will be no *get* issues later on and prevents the *get* from being used as leverage against you. You can contact OSF or someone you are already going to for advice in order to gauge whether this is a necessary first step for you to take.

### **3. *Beit Din* for All Issues**

If you choose to go to a *beit din* to resolve substantive issues like property and custody, there are a few things you should be aware of.

- Choice of *Beit Din*

It is important to realize that once you begin a process with a *beit din*, you may be unable to change your mind. For this reason, we recommend researching the *beit din* options carefully and discussing them with a trusted resource before you sign any documents committing yourself to a *beit din*.

If you have experienced domestic abuse, be mindful to select a *beit din* who has training and familiarity in screening for abuse and navigating post-abuse divorces. Because these divorces can operate very differently than other separations, it is beneficial for the *beit din* to have a close understanding of the particular dynamics of abuse.

If your divorce is higher conflict, your former spouse may disagree with you on the choice of a *beit din*. This disagreement can get complicated because, in Jewish law, a defendant (the person called to a dispute hearing) can choose a different forum. When two former spouses cannot agree on which *beit din* to go to, it is sometimes possible to set up a *zabla*. *Zabla* is an acronym for “*zeh borer lo echad*,” meaning that each party chooses a judge. In a *zabla*, each party selects a judge, and the two judges agree on a third. While a *zabla* can be a helpful way to resolve a dispute, it also comes with challenges. Agreeing on all of the judges can be slow and complicated, and because a specific *beit din* is not handling the case, it will likely be slower and

more unpredictable. In addition, because the *zabla* structure requires each party to select a judge, the process can potentially impact the impartiality of the judges.

ORA's helpline, OSF, has helped thousands of callers choose the proper *beit din* for their case. Please reach out for individual guidance.

- Representation in *Beit Din*

One area in which different *batei din* have different procedures is with representation. Just like lawyers are trained to represent clients in court, *tonaim* (*toen* is the singular and *toanim* is the plural) are trained to represent clients in *beit din*. However, while lawyers have ethical guidelines they must follow and boards that can discipline them for misdeeds, there is no such accountability or governing body for *toanim*. For that reason, it is important to be thoughtful about the decision to use a *toen* at all, which *toen* to hire, and what specific role they will play in your case. If you have an attorney as well as a *toen*, you want to make sure that they are not overlapping roles and that it is clear which topics are in your attorney's domain and which are being handled by your *toen*.

There are some *batei din* that do not allow *toanim* to appear at all, and there are others that will expect you to have one representing you. Figuring out the *toen* piece can be one component of the decision to choose one *beit din* over another.

If you have an attorney representing you in legal proceedings, your attorney may also be able to appear in *beit din* on your behalf, and/ or to communicate with the *beit din* through letters and emails. Your attorney may also be able to represent you in negotiations if they are part of the *beit din* process. Once again, this will vary depending on the culture and policies of the specific *beit din* that you select.

Aside from formal representation, you may also be allowed to bring a friend, parent, or other support person to a *beit din* proceeding. There are also volunteers that will accompany people to *beit din*, so please reach out to ORA for this support if it would be helpful to you! This in-person support can go a long way in making you feel comfortable in the process, particularly if you do not have many friends or family members in the area. We have often found that individuals experience the *get* process more positively when accompanied by a friend, parent, or other support person.

- Enforceability of *Beit Din* Rulings



If you choose to go to a *beit din* to resolve all substantive issues, it is important to be aware of the legal enforceability of any decisions made in that process. Unfortunately, there is often a misconception that a person can sign any sort of agreement in *beit din* and later have the agreement voided, saying it was signed under duress. It is important to realize that duress is a limited concept under the law, and not one to rely on.

If you sign an arbitration agreement to a *beit din* for legal issues, then the decisions made by that *beit din* will be final and enforceable under both Jewish and American law. There are some exceptions to this— for instance, custody determinations made by *batei din* in New York State can be reviewed— but they are limited. For this reason, it is important to agree to arbitration only if you feel confident in the *beit din*'s competency and reputation. The best way to find out about this is by speaking to a professional in the Jewish divorce field or by contacting OSF.

Please also be aware that American law may limit the enforceability of a *beit din*'s orders in matters of child custody.

#### **4. *Beit Din For Get Only***

If you decide to resolve substance issues through mediation or in a civil court, you will still need to go to a *beit din* to receive a *get*. You can receive your *get* by filing for an appointment and then choosing a date to come in to *beit din*. The second part of this guide will elaborate on what will happen in *beit din*.

##### *d. What If My Spouse Refuses?*

#### **1. Introduction**

In some situations, coordinating a *get* is only a matter of logistics. If, however, your spouse is being unaccommodating in coming to *beit din* or continually delays the *get* appointment, you may have reason to be concerned. Sometimes scheduling can be tricky and often a couple has trouble deciding on which *beit din* to go to; however, once there is a pattern of continued delay of or excuses from giving the *get*, you want to ensure you are protecting yourself with regards to the *get*.

If you begin the divorce process with concerns regarding the *get*— for example, your former spouse may have told you that “if you leave, you are not getting a *get*”— we recommend reaching

out for advice as early as possible. These situations require careful strategy, and you do not have to navigate this alone.

### **Halachic Prenup Definition (Generic)**

**The term prenup is a misnomer. A Halachic Prenup is not equivalent to an American civil prenup. It is a document signed before marriage that identifies the *beit din* that the Bride and Groom agree to use in the case of a divorce.**

The Bride and Groom may stipulate that a *beit din* is chosen for the purposes of the *get* only, or the *get* in addition to Substantive Issues. In addition, the Halachic Prenup stipulates a financial daily support obligation for each day a husband or wife does not comply with the *beit din*'s ruling.

The “Halachic Prenuptial Agreement,” henceforth referred to as the RCA-HPA, refers to the Rabbinical Council of America (RCA)’s Halachic Prenuptial Agreement. The RCA’s Prenup comes in two versions, a standard and reciprocal. The standard version only places obligations on men that do not issue a *get*; the reciprocal version has mirrored obligations for either a husband or wife that are not cooperating with the *get* process. See a copy of the RCA-HPA at the end of this guide.

There are other versions of halachic prenups available, although they are newer, and at times couples will write their own agreements. In addition, the RCA agreement has evolved over time, so a version signed fifteen years ago will look somewhat different from a version signed today; the current version has been tested and upheld in American courts of law.

## **2. If A Halachic Prenup Was Signed**

If you signed a halachic Prenuptial or Postnuptial Agreement, then this section applies to you. In this guide, “halachic Prenuptial Agreement” or “halachic Postnuptial Agreement” refers to the Rabbinical Council of America (RCA)’s agreement, henceforth referred to as the RCA-HPA. The RCA’s Prenup comes in two versions, a standard and reciprocal. The standard version only places obligations on men that do not issue a *get*; the reciprocal version has mirrored obligations for either a husband or wife that are not cooperating with the *get* process. If you add language to the Prenup document, even in handwritten notes, this can change the way the document functions. We recommend obtaining specific guidance on how to enforce the version of the Prenup you signed, especially if it is not the most common or mainstream version.

One of the primary elements of the RCA-HPA is that it serves as an arbitration agreement to the Beth Din of America (BDA) on the issue of the *get*. This means that under Jewish law, the BDA has the authority to decide the timing of the *get*. The RCA-HPA is enforceable under civil American law as well, as the United States has a policy to uphold arbitration agreements.

The RCA-HPA contains default language that gives the *beit din* jurisdiction over the issue of the *get*, as well as optional sections where a couple can give the *beit din* authority to decide custody, finances, or both. If you signed these optional sections, then you will be required to address these issues in *beit din*, unless the *beit din* concludes that they are not the right forum to hear the case.

Assuming you signed the basic language of the RCA-HPA only, you will need to enforce the Prenup by informing the Beth Din of America of your intention to divorce and obtain a *get*.

Some versions of the Prenup require a different process; for this reason, we recommend seeking individual guidance for the specific version that you signed. It is important that you contact the *beit din* listed on the halachic prenup when beginning the divorce process.

Once you contact the *beit din*, their staff will reach out to your former spouse to find out if he or she is amenable to scheduling a *get* ceremony. If your former spouse is unwilling to do so, the *beit din* may order a “*get* timing hearing,” which allows both parties to present their arguments for why a *get* should be given sooner or later. Following this hearing, the *beit din* can make an order as to when a *get* must be given. If your former spouse either fails to respond or indicates that he or she is not willing to arrange a *get*, then the *beit din* will often send a summons letter, referred to as a *hazmana*. In a typical process, a *beit din* will send three *hazmanot* (plural for *hazmana*), generally within two weeks for the person to respond in between. Following these three *hazmanot*, the *beit din* will issue a *hatra'at seruv*, or warning letter. If this is still ignored, the *beit din* may then issue a *seruv*.

If your former spouse does not cooperate with the *beit din* process once the *seruv* is in place, he or she will be required to pay \$150 per day, adjusted for inflation, to represent his or her spousal support obligations under Jewish law. This is completely separate from any property division or support the court may order. A court can then enforce the *beit din*'s judgment. If you have any questions regarding how to enforce a halachic Prenup or are experiencing any difficulties in navigating or understanding the process, you can reach out to the OSF helpline for guidance and support. Please keep in mind that some *batei din* need to be followed up with in order to ensure that the *hazmanot* are being issued.

As noted above, this guidance is specifically geared toward couples who have signed the RCA Prenup. If you signed some other form of a halachic prenup, please contact OSF to discuss the enforcement process.

### 3. If A Halachic Prenup Was NOT Signed

If you did NOT sign a halachic Prenuptial Agreement, then the process you need to follow to pursue a *get* will look different. As explained above, you should carefully research a *beit din* before signing any arbitration agreements. Once you approach a *beit din*, the first thing the *beit din* will generally do is reach out to your former spouse, often through a phone call. If your former spouse either fails to respond or indicates that he or she is not willing to arrange a *get*, then the *beit din* will often send a summons letter, referred to as a *hazmana*. In a typical process, a *beit din* will send three *hazmanot* (plural for *hazmana*), generally within two weeks for the person to respond in between. Following these three *hazmanot*, the *beit din* will issue a *hatra'at seruv*, or warning letter. If this is still ignored, the *beit din* may then issue a *seruv*.

A *seruv* is the Jewish legal version of a contempt order, indicating that the subject of the letter is violating Jewish law by refusing to cooperate with the *beit din* process. Jewish law requires that communities distance themselves from individuals who have a *seruv* issued against them, including measures such as not inviting the person for Shabbos meals, not giving them honors in the synagogue services, and more. If a *seruv* has been issued against your former spouse, we recommend that you contact ORA to pursue advocacy strategies.

In other situations, you may find it difficult to obtain a *seruv*, even if your former spouse is not cooperating with the *get*. For example, if you and your former spouse cannot agree on which *beit din* to work with, it will be difficult to begin the *hazmana* process. In addition, some *batei din* do not follow this structure and rarely issue formal *hazmanot* or *seruv* letters. This is one of many reasons why it is important to research *batei din* before initiating the process.

- A Note on Extortion

Unfortunately, there can be situations where a *get* is not withheld indefinitely, but used as leverage to obtain concessions in the divorce process. For example, your spouse may say, “If you want to have your freedom, you will need to pay me \$1,000,000” or “If you want your *get*, you must agree to the custody arrangement that *I* want.” These types of negotiations are sometimes very explicit and at other times more implicit.

Ultimately, only you can know what decision is best for yourself and your future. However, it is important to realize that you have options besides giving in to extortion. If you are facing this situation, please reach out to OSF. The helpline will point you to resources that can help you, such as free legal advice that will help you understand your rights and advocacy

support to pursue your *get* in other ways. Extortion is all too common in *get-refusal* cases, but it does not have to be.

If you live in New York State, please speak to an attorney to find out if the New York *Get* Laws are relevant to your set of circumstances, and consult with a rabbi and/or OSF to understand how the Get Law may apply as well as its *halachic* implications.