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“GET DIVORCED:” WHAT FAMILY LAWYERS NEED TO KNOW ABOUT JEWISH DIVORCE BY JONATHAN T. HOFFMAN, ESQ., AND DAVID J. STEERMAN, ESQ.

Under Jewish law (*halacha*), the act of marriage is the fusing of two individual souls together into one complete soul. One's partner in marriage is described as akin to one's hand in that absent extreme and dire circumstances, one would not sever one of his or her hands. While the fusing of souls that takes place in marriage is clearly significant in Jewish law and custom, the concept of a divorce to end a marriage has been determined to be a necessity.

Though divorce is not necessarily viewed by Jewish law in a positive light, it is recognized that marriages fail for various reasons ranging from irreconcilable differences to spousal abuse. In fact, when one spouse is the victim of abuse, divorce is not only encouraged, but is considered a *mitzvah* in that it is an opportunity for a fresh start and a second chance at happiness for the abused

Jonathan T. Hoffman is an Associate in the Philadelphia office of Klehr Harrison Harvey Branzburg LLP, a member of the Montgomery County Bar Association Family Law Section and a member of the PBA Family Law Section. jhoffman@klehr.com.

David J. Steerman is a Partner in the Philadelphia office of Klehr Harrison Harvey Branzburg LLP. He is admitted to the PA and NJ Bars. Mr. Steerman is a member, Pennsylvania, Philadelphia and Montgomery County Bar Associations Family Law Section; Chair, Philadelphia Bar Association Family Section (2003-04) and Council Member, Pennsylvania Bar Association Family Law Section. He is proficient in Spanish. dsteerman@klehr.com

spouse. Further, a properly completed divorce is one of the 613 *mitzvot* in the Torah.

Absent an abusive scenario, rabbis entrusted with following the tenants of Jewish law and custom often attempt to encourage couples dealing with marital strife to attend counseling, as divorce, like the covenant of marriage, should not be taken lightly. When reconciliation is not an option or fails, the parties are left to ensure that the Jewish law and traditions are followed properly with respect to obtaining a divorce.

The legal process for divorce under Jewish law requires a *get*. The literal interpretation of *get* means divorce document and is used to dissolve finally and fully the bonds of matrimony between a husband and wife under Jewish law. The concept of a *get* dates back to biblical times and is discussed in Deuteronomy. Many scholars believe the term comes from the Gaon of Villa and signifies the Hebrew letters *gimmel* and *tet*, which do not appear in any other Hebrew word, signifying the disharmony that usually occurs in marriage prior to either party seeking a divorce.

The *get* process, which is conducted by the Beth Din of America, is a complicated process; however, through the careful direction of a trained rabbi, the matter typically is handled in approximately one hour if both parties are present. The *get* is written by an expert scribe, who is the divorcing husband's agent. The *get* is tailored specifically to each couple and as such a standard form is not acceptable and will result in a potentially invalid *get*. The

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get is 12 lines long, specifies the location and the parties' names (which must be spelled using precise formulas) and indicates the freedom of the wife to be remarried. The get is then executed by two authorized witnesses.

Upon the scribe's completion of the drafting of the get and the witnesses' signatures, the husband presents the get to the wife in front of the witnesses and the marriage is dissolved. There are no prayers or blessings, no personal questions and little fanfare during the proceedings. The rabbi overseeing the process retains the original copy of the get, which he tears such that it may never be used again. Shortly after the proceedings, the officiating rabbi issues certificates of proof (*p'tur*) to each of the parties attesting that the get was properly drawn, proper get procedures were followed and that each of the parties is now free to remarry. The rabbi handling the proceeding retains the original copy of the get. If the divorcing parties are unable or unwilling to be together in the same room for the process, agents may be appointed for both parties such that the get process may still be undertaken.

In the United States, divorce proceedings do not serve as a means of dissolution to a Jewish marriage. Alternatively a Jewish divorce proceeding and a get do not replace the necessity of a Jewish couple's following the law of the land in getting a civil divorce. As such, many American Jews who divorce question the necessity of a get. This reluctance begs the question of why a get is not only important but substantially significant to the parties' futures, potentially their children's futures and the future of Judaism.

With the exception of reformed rabbis, most rabbis will not marry a person previously married under Jewish law without a get. Further, if one of the partners of the remarried couple still marry without previously receiving a get, a child born to the new wife may be considered illegitimate (*mamzer*) under Jewish law. This illegitimacy may result in the child being barred from marrying in certain sects of the Jewish community, and lasts for as long as 10 generations. The harshness of this reality depends upon the sect of Judaism one subscribes to and perhaps even the rabbi's

individual views within each sect. Even if a Jewish parent does not feel any religious or spiritual obligation to receive a get for themselves, or their lack of receiving a get is accepted in their particular community, it is argued that for the sake of their children and the future generations of Jews that a get be obtained.

An additional and potentially devastating issue with the get is when a man or woman refuses to cooperate in obtaining a get. While this used to just be a problem for women, it has been recognized for the last 1,000 years that a husband also needs his wife's consent to a divorce. If one of the parties refuses the get, the spouse who wishes to be divorced can end up as *agunah* or a chained spouse. In order to avoid this situation in Israel, the Knesset has gone as far as imprisonment or other sanctions in order to force compliance. While there are not similar penalties in the United States, some states link the validity of civil divorce decrees to the finalization of a get. In most states, as in Pennsylvania and New Jersey, where a get is not linked to a civil divorce decree/final judgment in divorce, the parties and counsel need to prepare accordingly.

As part of the negotiations surrounding a divorce, a provision should be included in the parties' agreement requiring each party's cooperation in obtaining a get in a timely fashion. The provision should contain both appropriate and persuasive penalties should either party refuse to cooperate or recant on their commitment. The penalties could include fines, legal fees and other potentially serious sanctions. Further, if there is serious concern that one party will not follow through with cooperating in order to obtain a get, the get ceremony should be undertaken before the final civil divorce decree is entered.

If parties are not yet married, they may wish to include a provision at the outset of their marriage in their *ketubah* (referred to as a Lieberman clause) or include it in any pre-nuptial agreement. Since spouses typically enter a marriage with the confidence that it will not fail, this can often be a difficult issue to broach; however, the crises of *agunah* potentially could have a tremendous effect on future Jewish generations and as such needs to be appropriately addressed. Assuming the parties marriage results in a permanent union of the souls, the provision will end up being nothing more than a precautionary measure.