

JOFA JOURNAL

A Factor in Preventing Cases of Agunah By Rivka Haut

About ten years ago, my husband and I, then married 26 years, signed a post-nuptial agreement. The GET (Get Equal Treatment) organization asked married couples to sign their newly written agreement as part of a campaign to encourage the use of prenuptial agreements. It was apparent that, despite the best efforts of many, too many young couples were not using them. Some of these couples just didn't realize they had the option; others were refusing to use them. A prevailing attitude among some of these young couples was that they shouldn't be thinking about divorce while entering a marriage, but, of course, this argument is specious, for the ketuba does exactly that. However, the ketuba merely provides monetary recovery in the event of divorce; it does not penalize those who refuse to give a get.

Since then, many couples use prenuptial agreements and more rabbis are insisting that they be signed. Recently, an agreement prepared by Rabbi Mordechai Willig has been adopted by the Rabbinical Council of America, and its member rabbis are encouraged to insist on its use by all couples.

Just last week I was approached by an aguna who needed help. She had not signed a pre-nuptial agreement when she was married. Would it have helped her obtain a get now if she would have signed an agreement? Well, that depends.

Pre-nuptial agreements require a husband and wife, upon termination of their marriage civilly, to participate in get proceedings. The agreements differ in the types of enforcement procedures used to achieve that result; some impose sanctions, others impose monetary obligations on the party who refuses to give or accept a get. Some agreements require the intervention of a beit din before sanctions or monetary obligations are imposed, while others leave the enforcement of the agreements to the civil courts. But if a get is not forthcoming, there will be sanctions or monetary obligations imposed. In those instances where there is a desire to extort money from the wife, this is a very powerful deterrent. Of course, if a man is willing to accept financial penalties while yet withholding a get, or if the husband has no assets, then the agreement cannot help.

Thus pre-nuptial agreements do not solve the underlying problem of husbands having the power to keep wives imprisoned in dead marriages. And an Orthodox pre-nuptial agreement has never been tested in a civil court, so it is unclear whether its contract will be upheld.

But while these agreements are not a cure-all, they have helped many women obtain a get and their use must be encouraged. I personally am aware of quite a number of cases where the get was given because of the agreement. And that is not even counting the many examples of gittin being granted, cases that never attain the status of aguna, because an agreement had been signed.

Anyone entering a marriage today without signing a pre-nuptial agreement is making a major error. It's like an insurance policy: you hope you never need it, but it is good to have, just in case.

*Rivka Haut is co-editor of *Daughters of the King: Women and the Synagogue*, and is an aguna activist.*