

JAY HAIT



SIX STEPS TO A HAPPIER FUTURE

A GUIDE FOR JEWISH COUPLES IN ISRAEL WHO WANT TO
GET DIVORCED VIA A DIVORCE AGREEMENT

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Introduction

The best thing that any couple can do when deciding to get divorced is to reach an agreement. It doesn't matter if the agreement is reached via intermediaries or via direct negotiations (when possible) although in my experience directly negotiated agreements are usually more stable and fairer. The bottom line is that divorces via agreement are less expensive, damage children less (when the couple has children), are adhered to more often, and are less likely to result in future litigation and the attendant future legal and emotional costs. It doesn't matter if you have children or not, if you have assets or not, or if you want to try to remain friends with your spouse after the divorce or not – if you and your spouse can reach a comprehensive overall agreement regarding getting divorced, then that is the path that you should be taking.



The question then is, once you have reached the “terms” of your divorce agreement, in Israel, how do you take these terms and go through the process of getting divorced? This is a bit different than in other countries because of the issues of “personal status” (i.e. religion) which is an issue for couples getting divorced in Israel, but which is not really relevant in most other Western countries.

In this guide, we will look at the steps required for couples where both spouses are Jewish to get divorced in Israel.

Just for your edification, I recommend to all couples – especially with children – to at least try marital counseling before they decide to get divorced – whether via agreement or litigation.

A handwritten signature in black ink, appearing to read 'Jay Hait', with a stylized flourish at the end.

Jay Hait, Adv.

Step 1

Formalizing the Agreement

So you and your spouse have reached agreements in principal on all of the terms of your divorce. What next?

The first step is to formalize the agreement. A lot of people ask me “does this have to be done by an attorney?” The basic answer is “no”. The whole process of getting divorced via a comprehensive divorce agreement can theoretically be done without the involvement of any attorneys. However, you may be better served by an attorney because the attorney’s job (in my opinion) is to ensure that the agreement has been made 1) in a format that the courts (both Family and Rabbinic) will accept and 2) in such a manner that ensures its future enforceability and mechanisms to address future conflicts. Remember – the whole reason that you are getting divorced via an agreement is to avoid the costs (both financial and emotional) associated with litigating your issues. It would be a real pity to reach an agreement that has holes in it that lead you to such litigation in the future – the very litigation that you worked together with your spouse (and many times at great cost) to reach an agreement and to avoid.



In any case, once you have turned your agreements into a formal document – now called the “Divorce Agreement” - and like everything else in Israel, this formal document is typically only between four and twelve pages – both you and your spouse have to execute and date the document. You should make sure that you initial each page of the document in addition to executing the signature page of the document.

Step 2*

Making a Motion to the Family Court to Affirm the Divorce Agreement as a binding judgment.

The next step is to have the Family court turn your Divorce Agreement into a binding judgment upon you and your spouse. The way this is done is by submitting a formal request to the court (in English, a “Motion” and in Hebrew, a “בקשה”) to set a court date to affirm your Divorce Agreement as a binding judgment.

At the time that you submit the motion, you must pay the statutory fees to the court.

After the court has received the motion, the court will assign your “case” a docket number and will set a date for the actual hearing at which you and your spouse must appear in order to have your Divorce Agreement affirmed as a binding judgment.



Step 3*

The Family Court Hearing

The Family court hearing is a relatively quick and painless proceeding, and usually takes less than half an hour (although you may be waiting a long time for the case before yours to finish – so if you are scheduled for a particular time, allow for at least two hours after that time in your schedule). The hearing takes place in front of a single judge, and there is no jury, and it is done “behind closed doors” which means that nobody except the spouses and their legal representation are present. During the hearing the judge 1) makes sure that the Divorce Agreement isn’t violating any laws, 2) asks each of the Parties (i.e. both of the spouses) questions regarding the Divorce Agreement to ensure that they understand what they signed, and 3) many times makes recommendations for minor amendments to the Divorce Agreement to make sure that points are not ambiguous. These changes will either be changed directly in the Divorce Agreement and signed to by the Parties or will be made via a printed court record – the hearing “Protocol”.

At this point the Divorce Agreement is affirmed by the judge as a binding judgment and the hearing is over.



* Family Court

The prior two stages can be skipped if you and your spouse both agree to only have the Rabbinic court handle all of the aspects of your divorce. Whether you are male or female, it is my personal recommendation that you do not skip those steps. Although skipping those steps will nominally cut down both on the time involved and the costs involved, there are a number of factors which in my opinion as an attorney just make it not worth the savings you get by skipping these steps. Two examples are: 1) the Rabbinic court may not just “accept” your Divorce Agreement and may try to convince you or your spouse to reconcile – especially in the case of a first marriage and when children are involved (yes, it's really paternalistic), and 2) if for whatever reason (usually because you or your attorney didn't set up the proper mechanisms in the Divorce Agreement) you do get into litigation in the future, you will be litigating in the Rabbinic court rather than the Family court – and I personally find the Rabbinic court outcomes to be less predictable and less professional with regards to secondary divorce litigation (i.e. things like Divorce Agreement enforcement).



Family Court Rabbinical Court



Step 4

Getting the Divorce Agreement affirmed as a binding divorce judgement in the Rabbinic court

The next step is to have the Rabbinic turn the Family court judgment (or the Divorce Agreement) into a binding judgment for divorce upon you and your spouse. This too, is done is by submitting a motion – this time to the Rabbinic Court - to set a court date to affirm the Family court judgment or the Divorce Agreement as a binding Rabbinical court judgment for divorce.

If you have had the Divorce Agreement confirmed as a judgment by the Family court, then he motion must be submitted together with a certified copy of the Family court’s judgment affirming the Divorce Agreement.



Here too, at the time that you submit the motion, you must pay the statutory fees to the Rabbinic court.

After the Rabbinic court has received the motion, the Rabbinic court too will assign your “case” a Rabbinic court docket number

(which is different than the Family court docket number) and will set a date for the actual hearing at which you and your spouse must appear in order to have your Divorce Agreement affirmed as a binding judgment for divorce by the Rabbinic court.

Step 5

The Rabbinic Court Hearing

The Rabbinic court is generally a relatively quick and painless proceeding when you come to it after having had a Family court affirm the Divorce Agreement as a binding judgment. However, it can take a lot more time and maybe not be affirmed right away if you have submitted the motion directly based on your Divorce Agreement. This hearing too, usually takes less than half an hour (although you may be waiting a much longer time for the case before yours to finish – so if you are scheduled for a particular time, allow for at least three hours after that time in your schedule). The hearing takes place in front of three Rabbinical court judges – “דיינים” in Hebrew, and here too there is no jury, and it is done “behind closed doors”. However, each of you will need a witness who will be called in at some point during the hearing. During the hearing the Rabbinical court judges 1) make sure that the couple really wants to get divorced – which may include asking personal questions and trying to ensure that the couple really wants to get divorced 2) verifies the identity of the Parties (which is why each side needs witness who know them and their father and their relative Hebrew names and any nick names), and 3) may ask questions regarding the terms of the Divorce Agreement and the members of your immediate family.

At this point the Judgment from the Family court and/or the Divorce Agreement is affirmed by the Rabbinical court judges as a judgment for divorce, and the hearing is over.



Step 6

The Get Ceremony

The final step of the process is the actual divorce itself. This process usually takes a few hours, and involves going through a series of ceremonies as described in the Babylonian Talmud by which the husband grants and the wife accepts the writ of divorce. The ceremony has a number of stages (which is why I call them ceremonies) which include, amongst other things, the appointment of somebody to write the writ of divorce (the "Get"), witnesses (not the witnesses you supplied in the last stage but those provided by the Rabbinic court), the granting by the husband and accepting of the Get by the wife, and a recommendation by the Rabbinical court regarding the wife being allowed by other men and timelines regarding pregnancy (I kid you not). When the ceremony is over, the Parties can each receive a certificate of divorce after paying a statutory fee, and as far as the state of Israel is concerned, the couple is divorced.

Congratulations, if you and your spouse have made it to this point, you are now no longer spouses and are divorced.



Please feel free to call my office if you have any questions or comments. Jay Hait, Adv. (077) 200 – 8161.



Jay Hait has been practicing law in the U.S. and/or Israel for nearly twenty years. When in the United States, Jay had a boutique securities related practice in New York City. When he moved to Israel with his family in 2004, Jay initially flew back and forth and continued to practice securities law in the United States. After going through an ugly divorce in Israel, with ancillary divorce litigation both in the United States and Israel, Jay was awarded custody of his three minor children (then 10, 7, and 4). Jay realized that despite the archaic family law system in Israel, there had to be a better way to get divorced than the process he had gone through, and opened a law practice in Israel focused on family law.

Today Jay's practice focuses on family law issues for the Jewish Anglo Saxon community in Israel, with affiliated offices in Tel Aviv, Haifa, and Jerusalem, and local intake offices in most areas with large Anglo communities. Jay and his staff pride themselves on helping people from western countries navigate through the seemingly archaic intricacies of the Israeli family law system.