



BETH DIN of AMERICA
בית דין דאמריקא

CALIFORNIA PREMARITAL AGREEMENT MATERIALS

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The Beth Din of America thanks Francesca Brotman-Orner, Esq. at Gould-Saltman Law Offices, LLP in Los Angeles, CA, for her assistance in preparing these materials.

California Premarital Agreement Instruction Sheet

The State of California has specific requirements that must be met in order for a premarital agreement (also known as a prenuptial agreement, or pre-nup) to be valid. If a couple does not complete each requirement, and they later divorce, it is likely that the secular family law court will not enforce their premarital agreement, even if a Beit Din says that the agreement is enforceable under Jewish law.

The instructions cannot replace the advice of an attorney who is experienced in family law. It is strongly recommended that each member of the couple (the husband-to-be and the wife-to-be, also referred to as the “party” or “parties”) consult with his or her own attorney prior to entering into a premarital agreement to ensure that all secular legal requirements have been met. If a premarital agreement addresses spousal support, it is not enforceable if the person who is being asked to comply with the agreement was not represented by his or her own attorney at the time the agreement was signed.

The instructions set forth below do not encompass the entire law on premarital agreements in California. They are intended to assist couples to take the necessary steps to execute an enforceable premarital agreement. Any questions regarding this process should be posed to a competent family law attorney.

California law (Family Code sections 1610 – 1617) requires the following with regard to premarital agreements:

1. Each party must provide to the other a full disclosure of his or her property and financial obligations.

a. **The disclosure is normally accomplished through the parties’ exchange of two forms published by the California Judicial Council - the Income and Expense Declaration (FL-150) and the Schedule of Assets and Debts (FL-142). Each form must be completely filled out and served on the other party with supporting documents.** Forms are available at <http://www.courtinfo.ca.gov/forms/>

2. Each party must waive, in writing, his or her right to a further disclosure.

a. **This provision is contained in the Beth Din of America’s sample premarital agreement.**

3. If either party is not represented by his or her own attorney at the time the agreement is signed, the party must have been advised to retain his or her own attorney, and must sign a waiver, in a separate document from the premarital agreement, of representation.

a. **A waiver sheet is included with the Beth Din of America’s sample premarital agreement.** It must be executed as a separate document.

4. Seven days must elapse between the time that 1) each party receives the agreement and is advised to seek counsel, and the time that 2) each party signs the agreement.

5. Each party must be fully informed - in writing - of the terms of the agreement and the effect of the agreement before the agreement is signed. Each party must be fully informed of the rights and obligations he or she may be giving up by signing the agreement. This information, and the agreement itself, must be provided to each party in a language in which each is proficient - meaning that each party must have a very good knowledge of the language of the agreement and the explanation of the effect of the agreement.

a. **A sample explanation of the effect of the Beth Din of America's premarital agreement is provided on the BDA's website (in English).**

6. If either party is not represented by his or her own attorney at the time the agreement is signed, he or she must sign a document that says that he or she received the explanation of the agreement's effect on his or her rights and obligations, and who provided the explanation.

a. **A declaration that a party has received the required explanation is provided on the BDA's website (in English).**

An Explanation of the Terms of the Beth Din of America's Premarital Binding Arbitration Agreement and Their Effect

The following document describes the terms contained in the Beth Din of America's premarital Binding Arbitration Agreement ("the agreement") and what the effect is of entering into the agreement. This document is intended to comply with California Family Code section 1615. It does not replace the advice of a competent family law attorney, nor does it guarantee that your premarital agreement will be enforced by a Court. You are strongly encouraged to consult with a competent family law attorney regarding the agreement before you sign it.

The terms of the agreement as described below apply equally to each party to the agreement. They go into effect if the parties to the agreement, the husband-to-be and the wife-to-be, stop living together as husband and wife. At that point, the parties are required to arbitrate the status of their marriage before the Beth Din. This means that if you get married and later separate from your spouse, you have agreed to have your Jewish divorce overseen by the Beth Din and you agree to follow their order regarding your Jewish divorce. If you refuse to go to the Beth Din once you separate, your spouse could ask the secular civil court to require you to do so, and you will be subject to the penalty described in the agreement, which is further explained below.

You are not required by secular law to get a Jewish divorce. Jewish law requires divorcing Jewish couples to get a Jewish divorce. This is accomplished through a beit din (Jewish court) proceeding.

The agreement also gives the secular family law court the power to enforce the Beth Din's decisions. Without a binding arbitration agreement, the secular court has no power to enforce the decisions made by a religious court.

Once you sign the agreement, you are giving the Beth Din of America (or its designee), or any other beit din you specify, the power to make orders regarding your get, your Jewish premarital conditions (tena'im) and your ketubah if you later separate. You will be required, unless you and your spouse agree otherwise or the beit din makes different orders, to use the beit din specified in the agreement.

Either party may require the other to appear before the Beth Din, in person. If you refuse to do so, you will be responsible for any fees and costs that the beit din orders, including attorney fees, and such an order is enforceable in secular court. Each party must cooperate with the Beth Din's procedures and orders. If either party fails to appear before the Beth Din after having been told when to appear, the Beth Din can make a decision regarding your marriage and the costs involved in the proceeding without your being present. Without the agreement, the secular court could not order you to go to a beit din, nor would it have any obligation to uphold any order of the beit din unless you signed an arbitration agreement with the beit din.

Each party is agreeing that the Beth Din's decisions shall be based on Jewish law, rather than on secular law. If you took your marital dispute to the California civil court, the court would apply secular law to your case. You are also giving the Beth Din the power to order you to pay for the Beth Din's services in whatever allocation the Beth Din decides.

If you and your spouse stop living together but remain married according to Jewish law, the agreement requires each of you to pay to the other the equivalent of \$150 per day as of the day you married. This \$150 per day payment is not intended to be a spousal support payment under secular law and does not replace any secular legal obligation either party may have to pay the other spousal support. The husband is waiving his Jewish law right to his wife's earnings during this time. The wife is waiving her Jewish law rights to food and support from her husband during this time. As long as both spouses are obligated to make this payment to the other, neither is required to actually make a payment, because each has the same obligation to the other. Neither spouse is waiving any right to support under secular law, and each can pursue support orders in the secular family law court. If you do not enter into this agreement, the legal obligation to pay each other after separation would not exist without a secular court's support order.

If either party refuses to appear before the Beth Din or refuses to follow the rulings and recommendations of the Beth Din, the other party no longer has to make the \$150 equivalent per day payment. This means that instead of each party owing it to the other, the spouse who refuses to go to the Beth Din or to abide by its rulings has to pay the money to the other spouse. The spouse to whom the money is owed can go to secular court to ask that the agreement be enforced and for an order that the money be paid. If the parties do not enter into this agreement, the secular court cannot order either spouse to participate in arbitration before a beit din and cannot make any orders penalizing either spouse for not participating in a beit din proceeding or abiding by a beit din's decisions.

DECLARATION OF

I, _____, hereby declare as follows:

1. I am a party to the Beth Din of America Binding Arbitration Agreement with _____, which sets forth obligations between me and my spouse-to-be _____ should we separate and stop living together as husband and wife. I make this declaration from personal knowledge.

2. I have not been, and am not represented by counsel with respect to the arbitration agreement. I have been advised to consult with an attorney, and have chosen not to. I understand that the arbitration agreement affects my rights and obligations should my spouse and I choose not to live together as husband and wife.

3. I have received a written explanation of the effect of the agreement on my rights and obligations. The explanation was provided to me by _____. I am proficient in English and I understand the explanation that was provided to me.

4. I received the agreement and was advised to consult with an attorney at least seven days before I signed the agreement.

I declare the foregoing to be true under penalty of perjury under the laws of the State of California.

Executed the ____ day of _____, in the county of _____.

(Signature)

(Print name)

BETH DIN OF AMERICA**בית דין דאמריקא**

ב"ד לעניני ממונות ואישות

305 Seventh Avenue, 12th Floor, New York, NY 10001-6008

(212) 807-9042 • Fax: (212) 807-9183

E-mail: menahel@bethdin.org • www.bethdin.org**THE BETH DIN OF AMERICA
BINDING ARBITRATION AGREEMENT***Reciprocal version**For use in the State of California*

Please note that Jewish law requires that parties to any dispute must seek to submit that dispute to a rabbinical court before Jewish Law permits them to sue in secular court. This agreement does not compel parties to submit all aspects of a marriage dispute to a rabbinical court; parties need to sign an additional arbitration agreement to accomplish that goal. For such an agreement, please contact the Beth Din of America at 212-807-9042 or at menahel@bethdin.org or at www.bethdin.org.

THIS AGREEMENT MADE ON THE _____ DAY OF THE MONTH OF _____ IN THE YEAR 20 ____, IN THE CITY/TOWN/VILLAGE OF _____ STATE OF _____.

between:

HUSBAND-TO-BE: _____

RESIDING AT: _____

and:

WIFE-TO-BE: _____

RESIDING AT: _____

The parties, who intend to be married in the near future, hereby agree as follows:

I. Should a dispute arise between the parties after they are married, so that they do not live together as husband and wife, they agree to refer their marital dispute (but not issues relating to spousal or child support, property, property division or custody obligations), to an arbitration panel, namely, The Beth Din of America (currently located at 305 Seventh Ave., New York, NY 10001, tel. 212-807-9042, www.bethdin.org), or any other Beth Din specified in writing by the Beth Din of America before proceedings commence, for a binding decision. The defined term for the Beth Din of America or any such Beth Din specified by the Beth Din of America shall be "the Beth Din".

II. The decision of the Beth Din shall be fully enforceable in any court of competent jurisdiction.

III. The parties agree that the Beth Din is authorized to decide all issues relating to a get (Jewish divorce) as well as any issues arising from this Agreement or the *ketubah* and *tena'im* (Jewish premarital agreements) entered into by the Husband-to-Be and the Wife-to-Be. Each of the parties agrees to appear in person before the Beth Din at the demand of the other party.

IV. Failure of either party to perform his or her obligations under this Agreement shall make that party liable for all costs awarded by either the Beth Din or a court of competent jurisdiction, including reasonable attorney's fees,

incurred by one side in order to obtain the other party's performance of the terms of this Agreement.

V. The decision of the Beth Din shall be made in accordance with Jewish law (*halakha*) or Beth Din ordered settlement in accordance with the principles of Jewish law (*peshara krova la-din*), except as specifically provided otherwise in this Agreement. The parties waive their right to contest the jurisdiction or procedures of the Beth Din or the validity of this Agreement in any other rabbinical court or arbitration forum other than the Beth Din. The parties agree to abide by the published Rules and Procedures of the Beth Din (which are available at www.bethdin.org, or by calling the Beth Din of America) which are in effect at the time of the arbitration. The Beth Din shall follow its rules and procedures, which shall govern this arbitration to the fullest extent permitted by law. Both parties obligate themselves to pay for the services of the Beth Din as directed by the Beth Din.

VI/A. The parties agree to appear in person before the Beth Din at the demand of the other party, and to cooperate with the adjudication of the Beth Din in every way and manner. In the event of the failure of either party to appear before the Beth Din upon reasonable notice, the Beth Din may issue its decision despite the defaulting party's failure to appear, and may impose costs and other penalties as legally permitted.

VI/B. Husband-to-Be acknowledges that he recites and accepts the following: I hereby now (*me'achshav*), obligate myself to support my Wife-to-Be from the date that our domestic residence together shall cease for whatever reasons, at the rate of \$150 per day (calculated as of the date of our marriage, adjusted annually by the Consumer Price Index-All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics) in lieu of my Jewish law obligation of support so long as the two of us remain married according to Jewish law, even if she has another source of income or earnings. Furthermore, I waive my *halakhic* rights to my wife's earnings for the period that she is entitled to the above stipulated sum, and I acknowledge, that I shall be deemed to have repeated this waiver at the time of our wedding. I acknowledge that I have effected the above obligation by means of a *kinyan* (formal Jewish transaction) in an esteemed (*chashuv*) Beth Din as prescribed by Jewish law. However, this support obligation shall terminate if Wife-to-Be refuses to appear upon due notice before the Beth Din or in the event that Wife-to-Be fails to abide by the decision or recommendation of the Beth Din. **This support obligation under Jewish law is independent of any civil or State law obligation for spousal support, or any civil or State law imposed order for spousal support.**

VI/C. Wife-To-Be acknowledges that she recites and accepts the following: I hereby obligate myself to my Husband-To-Be to discharge all duties incumbent upon me in the manner of Jewish wives who care for their husbands loyally. If we do not continue domestic residence together for whatever reason, then I now (*me'achshav*) obligate myself to pay Husband-To-Be \$150 per day (calculated as of the date of our marriage, adjusted annually by the Consumer Price Index-All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics) for all his domestic needs from the day we no longer continue domestic residence together, so long as the two of us remain married according to Jewish law, even if he has another source of income or earnings. Furthermore, I waive my *halakhic* rights to food and support for the period that he is entitled to the above-stipulated sum and I acknowledge that I shall be deemed to have repeated this waiver at the time of our wedding. I acknowledge that I have effected the above obligation by means of a *kinyan* (formal Jewish transaction) in an esteemed (*chashuv*) Beth Din as prescribed by Jewish law. However, this obligation shall terminate if Husband-To-Be refuses to appear upon

due notice before the Beth Din or in the event that Husband-To-Be fails to abide by the decision or recommendation of the Beth Din. **This support obligation under Jewish law is independent of any civil or State law obligation for spousal support, or any civil or State law imposed order for spousal support.**

VI/D. The payment obligations set forth in paragraphs VI/B and VI/C above shall be subject to offset by each other, so long as both shall be payable and shall not otherwise be subject to offset.

VII. This Agreement may be signed in one or more duplicates, each one of which shall be considered an original.

VIII. This Agreement constitutes a fully enforceable arbitration agreement. Should any provision of this Agreement be deemed unenforceable, all other surviving provisions shall still be deemed fully enforceable; each and every provision of this Agreement shall be severable from the other. As a matter of Jewish law, the parties agree that to effectuate this agreement in full form and purpose, they accept now (through the Jewish law mechanism of *kim li*) whatever minority views determined by the Beth Din are needed to effectuate the obligations contained in Section VI and the procedures and jurisdictional mandates found in Sections I, II, III, IV and V of this Agreement.

IX. Each of the parties acknowledges that he or she has been given the opportunity prior to signing this Agreement to consult with his or her own rabbinic advisor and legal advisor. Each of the parties further acknowledges that he or she has provided to the other party and received from the other party a fair, reasonable, and full disclosure of their property and financial obligations, and that each party voluntarily and expressly waives any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided. Each of the parties acknowledges that he or she has been fully informed of the terms and basic effect of this agreement as well as rights and obligations they may be giving up by signing the Arbitration Agreement and that they are proficient in the language in which the explanation of their rights was conducted, and in which this agreement is written. The obligations and conditions contained herein are executed according to all legal and *halachic* requirements.

In witness of all the above, the Husband-to-Be and Wife-to-Be have entered into this Agreement. This agreement was presented to Husband-to-Be and Wife-to-Be at least seven calendar days prior to execution.

SIGNATURE OF HUSBAND-TO-BE: _____

WITNESS: _____

WITNESS: _____

SIGNATURE OF WIFE-TO-BE: _____

WITNESS: _____

WITNESS: _____

ATTORNEY'S CERTIFICATION: Husband-to-be

I am an attorney at law, licensed and admitted to practice in the State of California. I have been consulted by the Husband-to-Be. I have advised and consulted with him with respect to the issues covered by this Agreement, and have fully explained to him the legal significance of the foregoing Agreement and the effect it has upon his rights as a matter of California law. Husband-to-Be has also been advised to consult an Orthodox rabbi to explain the Jewish law and significance in Jewish law of the foregoing Agreement. No advice is being given by the undersigned regarding the "halachic" Jewish law and significance in Jewish law of the foregoing Agreement. No waiver of the attorney-client privilege is intended by this certification.

Attorney at Law

Dated: _____

ATTORNEY'S CERTIFICATION: Wife-to-be

I am an attorney at law, licensed and admitted to practice in the State of California. I have been consulted by the Wife-to-Be. I have advised and consulted with her with respect to the issues covered by this Agreement, and have fully explained to her the legal significance of the foregoing Agreement and the effect it has upon her rights as a matter of California law. Wife-to-Be has also been advised to consult an Orthodox rabbi to explain the Jewish law and significance in Jewish law of the foregoing Agreement. No advice is being given by the undersigned regarding the "halachic" Jewish law and significance in Jewish law of the foregoing Agreement. No waiver of the attorney-client privilege is intended by this certification.

Attorney at Law

Dated: _____

Waiver of Right to Counsel

If the parties are not represented by counsel, the unrepresented party(ies) must execute an express waiver of representation by independent counsel.

I have been fully informed of the terms and basic effect of the above agreement, as well as rights and obligations I may be giving up by signing this agreement. I am proficient in the language in which the explanation of my rights was conducted (English), and in which this agreement is written (English). I understand that this agreement authorizes the Beth Din of America to decide matters related to the giving and receiving of a Jewish divorce and to impose support obligations, independent of California law, so long as the parties remain married according to Jewish law.

SIGNATURE OF HUSBAND-TO-BE: _____

WITNESS: _____

WITNESS: _____

SIGNATURE OF WIFE-TO-BE: _____

WITNESS: _____

WITNESS: _____

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____ (Name of Notary),
personally appeared _____ (name of
Husband-to-Be), who proved to me on the basis of satisfactory evidence to be the
person(s) whose name is subscribed to the within instrument and acknowledged to
me that he executed the same in his authorized capacity, and that by his
signature on the instrument the person executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____ (Name of Notary),
personally appeared _____ (name of
Wife-to-Be), who proved to me on the basis of satisfactory evidence to be the
person whose name is subscribed to the within instrument and acknowledged to me
that she executed the same in her authorized capacity, and that by her signature
on the instrument the person executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

END OF DOCUMENT