Assuming one does not lose his ownership rights, the *mezuzah* still belongs to the original owner. In our case, this means that the new tenant is borrowing the *mezuzah*. In reality, he never made a specific loan. By occupying the home, he passively took possession of the borrowed *mezuzah*. Does this make him a borrower? Is the real borrower the original tenant? The difference might be seen if something should happen to it. Whose liability is the *mezuzah* now? Another possibility is that the new tenant is a borrower from the former tenant. Since we suggested earlier that in all usual cases the new tenant becomes a borrower, our case should be the same.

This raises the issue of *shomer shemasar leshomer*, a watch handing over the item to a second watch. The owner might claim that he trusted his item to the first watch, but not to the second. In the case of a borrower, the issue becomes more problematic. A *shoel* has the right to use the item, as opposed to a *shomer*, who is simply a guardian. This means that if he loans it to a second borrower, the second borrower will also use it. This makes the objections of the owner stronger. He may certainly say that he would never have loaned it to the second person, based on how he feels the second person will treat it. Our particular case happens to involve very limited 'usage'. In fact, the item will never move from the place it was put by the first borrower. If it is moved, it immediately is returned to the owner, as explained. The small time period between its removal and return to the owner is the issue here. For that time frame, the *mezuzah* is in the hands of an unwanted *shomer*. However, this could be fixed by arranging that it may not be removed by the new tenant, but by the owner o the original tenant.

Another issue arises. If the conclusion is that the *mezuzah* must remain in place, the owner must be informed of this. What if he is not told? One may not borrow something without informing the owner. This is tantamount to robbery. However, if the item is borrowed to use for a *mitzvah*, one may take it without permission. The presumption is that the owner would be glad to have a *mitzvah* done with his item. This applies to any item that will not deteriorate with use. The *mezuzah* in our case would, by definition, be such an item. It will only be 'borrowed' in the event that it remains in one place all the time.

The *halacha* is quite explicit in the case of a borrower lending to a second person. It is forbidden, even with a *mitzvah* item. The only way it would be permitted in our case, is if the owner agrees, or if it is still considered in the domain of the first borrower. [See Gitin 29a Baba Metzia 29a-b 35b-36b 41a 43b Baba Basra 88a, Poskim. Tur Sh Ar CM 291:21-26 307:4-5 342 359:5, commentaries. Minchas Chinuch 423. Chovas Hadar 1:*1*.]

If the borrower must return the *mezuzah*, he must remove it when he moves out. He has no obligation to place a new *mezuzah* there once he moves out.

In conclusion, due to all the unanswered questions, the lender must be involved in the decision. It seems that he has the right to refuse. It would seem that if he refuses, neither he nor the borrower can be held accountable for depriving the door of its *mezuzah*.

On the Parsha ... *.. on your mezuzos .. [6:9]* See above!!

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Parshas Vaeschanan/Nachamu 5771. Vol. XIV No. 41 **בס"ד**

HALOCHOSCOPE

This week's question:

When moving, one may not remove the *mezuzos*. If a tenant borrowed a *mezuza*, should he leave it behind, and compensate the lender with money or a replacement *mezuza?*

The issues:

A) *Mezuza*, especially for tenants

B) Removing a *mezuza* when leaving

C) Responsibilities and liabilities of a borrower

Sections A and B reproduced from Halochoscope XIII:39

A) Mezuza for a tenant

The terminology used by the Torah is to affix the *mezuza* to the door-posts of '*baise**cha** uvishe'are**cha***, **your** doors and **your** gates'. The Talmud derives from here that there are two conditions for the obligation: one must own the house, and he must live there or otherwise occupy it. It must be considered livable by normal residents. This includes storage areas that could be lived in, or are used for living-related purposes. Offices, some garages (when used to store indoor type items, rather than cars and lawnmowers) and many types of warehouses are included. All rooms that meet the minimum dimensions and have the correct type of doorway require a *mezuza* on their door-post.

An owner is obliged to affix a *mezuza* when he occupies the premises. A tenant is only obliged at the end of the first thirty days of residence, except those who rent in *Eretz Yisroel*. This will encourage the quick resettlement of the home, if the tenant leaves, and will help *yishuv Eretz Yisroel*, the settlement of Israel by Jews. If one affixes a *mezuza*, it will stay when he leaves (see below). It is easier for a landlord to find a new tenant if the doorway has a *mezuza*. Therefore, rather than wait thirty days, by which time the current tenant might have changed his mind, the obligation begins immediately.

Outside *Eretz Yisroel* a tenant is obliged only after thirty days. In a minority view, the term *baisecha*, your house, only applies to living, implying permanent residence. A renter could be viewed as having taken up temporary residence, until he stays for thirty days. This view considers the obligation on a tenant after thirty days the same as an owner – Scriptural, according to some commentators. The majority consider a tenant obliged Rabbinically. The best known interpretation of this Rabbinical obligation is that the home is *nir'is keshelo*, resembles his own house. Accordingly, it was felt necessary to impose a Rabbinical obligation. For the first thirty days of occupation, this appearance does not show. This can be explained in three ways: (i) The onlooker knows that the tenant did not own this house previously. He considers him a mere lodger. After thirty days, the onlooker assumes that the house belongs to him. (ii) The the onlooker might know that he is renting. Nonetheless, he considers a long term tenant to be a resident, tantamount to an

owner, living in *his own* house! Besides, a rental agreement is like a purchase for a limited time period. This perception is sufficient to warrant a Rabbinical obligation. (iii) A third theory compares renting to borrowing, that is *nir'is keshelo* after thirty days. This requires one living in borrowed space, free of charge, to affix a *mezuza.*

There is a view that if a tenant has agreed to rent for a year, even outside *Eretz Yisroel*, he must affix a *mezuza* immediately. The reason a regular tenant does affix his *mezuza* for the first thirty days is due to the temporary nature of his residence. One who signs a lease for a longer period has committed to a more permanent residency. Others contend that this is based on the minority view that a tenant has a Scriptural obligation.

There is some debate on a whether a tenant who chooses to affix his *mezuza* before the end of the first thirty days may recite a *brocha.* Not being obligated, can he say '*vetzivanu*', [Hashem] commanded us, when doing the *mitzvah*? May he accept the *mitzvah* voluntarily, and recite a *brocha*? [See Shabbos 22a Pesachim 4a Yuma 11b 21a 26a Menachos 44a Chulin 110b 135b-136a, Poskim. Chinuch 423. Tur Sh Ar YD 286: esp. 22, commentaries. Avnei Nezer YD 180.]

B) Removing a mezuza

The Talmud forbids removing a *mezuza* from a rented property, when moving out. This applies even to the *mezuza* affixed by this same tenant when he moved in. According to most of the explanations provided, this also applies to a seller.

The explanations are: (i) *Mezuza* affords protection to the house. Removing the *mezuza* allows access to destructive forces. (ii) Some add, the incoming Jewish tenant will not be required to affix his *mezuza* for thirty days. The outgoing tenant will be indirectly liable for any harm befalling the incoming tenant. According to this, if the incoming tenant or buyer will affix his *mezuza* immediately, the restriction against removal is lifted. (iii) Removal of the *mezuza* lowers the level of holiness on the door-post; *maalin bakodesh velo moridin*, one may not lower sanctity. (iv) Removal of the *mezuza* removes the *Shechinah*, divine Presence, from the house, another manifestation of *horada bikedusha*. (v) It lowers the level of *kedusha* of the *mezuza* itself. While attached to the door-post it is serving its holy purpose. This reasoning would allow moving it from one door-post to another. Accordingly, if one cannot get *mezuzos* for his new home, he may remove the old ones and affix them immediately in his new home.

The Talmud relates, King Munbaz took a *mezuza* with him on his travels. He had no permanent residence, and wanted a memento of *mezuza* wherever he went. However, he did not affix it to the door-post. He affixed it to a stick and placed it by the door. Some suggest that had he affixed it, he could not have removed it when he moved on. Even though he was clearly not obliged, as his lodging was of a very temporary nature, once attached, it could not be removed. [See Baba Metzia 101b-102a Avoda Zara 14a Yerushalmi Peah 1:1 Menachos 32b, Poskim. Tur Sh Ar YD 291:2, commentaries.]

C) Responsibility and liability of a borrower

Some *mitzvos* require *lachem*, the item must be owned by the one performing the *mitzvah* with them. *Mezuzah* does not appear to have this requirement. Accordingly, one could fulfill his obligation with a borrowed *mezuzah.* This being the case, one could also recite the *brocha* on a borrowed *mezuzah.*

Our question is, if one indeed borrowed a *mezuzah,* may he leave it in place when he moves? Must he actually leave it in place, since this is "normal usage"? On the one hand, the lender allowed the borrower to use it indefinitely. Perhaps there is an understanding that if the borrower does not get around to replacing it with one of his own, it will need to remain in place. On the other hand, the lender clearly expected the *mezuzah* to be returned to him at any time. This should not raise a problem. The new tenant will be told that the *mezuzah* does not belong to the old tenant. It was only left behind due to the *halacha* discussed in section B. In fact, the new tenant will also keep the *mezuzah* on loan, until he gets one of his own to replace it.

Usually, the outgoing tenant may ask that the incoming tenant pay for the *mezuzos.* It is proper for the incoming tenant to pay for them. However, the outgoing tenant may not demand payment legally. If this were the case, if the incoming tenant refused to pay, the *mezuzah* would be considered stolen property. Rather, the outgoing tenant must simply leave the *mezuzah* in place. In our case, the outgoing tenant will inform the incoming tenant that if and when it is replaced, it should be returned to its true owner.

This assumes that an incoming tenant may not do with the *mezuzah* as he sees fit. It still belongs to the original tenant. If removed, it must be returned to the original tenant. In that case, it is on loan to the incoming tenant for the duration. As soon as it is removed, even for checking, the new tenant has no right to keep it in his possession.

However, this is unclear. From the language of the various poskim, it appears that some view it as though the obligation to leave the *mezuzah*, as a practical matter, removes it from the ownership of the original tenant. One may make stipulations with his landlord before entering into any agreement to be compensated for the *mezuzos.* Furthermore, a homeowner who moves and rents his home to a new tenant may stipulate that the tenant pays for the *mezuzos.* This implies that if no such stipulation was made, the original owner loses his rights to that *mezuzah.*

Some poskim also say that when asking for payment from an incoming tenant, one may not ask for the full price of the *mezuzah*, but for the value of a basic *mezuzah* [if this is less]. This implies that when asking for payment one may only seek compensation for saving the new tenant from his own costs. This concept exists when one provides a service to his fellow without being asked to. In those cases, the service provider may demand the payment, but is limited to asking for the net gain, rather than the sum cost or value. In our case, even this amount may not be demanded, but asked for respectfully. The recipient is not required to pay, but it is proper to pay for it. On the other hand, it is possible that there is indeed an obligation *latzeis yedei shamayim*, to satisfy one's obligation to Heaven. This applies when the legal system in not empowered to enforce payment, but there is a legal obligation. In some cases, it applies when there is no legal obligation, but a moral one. Our case could be viewed as either of the two.

A second question arises. Assuming that one should leave a *mezuzah* behind, is the lender obliged in the same way? Must he also leave his *mezuzah* on the door-post in question? Is he also bound by the same regulations that bind the outgoing tenant? Could it be that he loses his rights as well? Although he never meant this to take place, perhaps he should have realized that it might happen!