

HALOCHOSCOPE

This week's question:

When moving, one may not remove the *mezuzos*. The owner of the house wishes to take his *mezuzos*. It has been a while since he checked his *mezuzos*. May he take down the *mezuzos* on the pretext of checking them, then keep them to put in his new house? If he may not do this, may he use borrowed *mezuzos* to replace his own? The new tenant will need to negotiate with the owner of the *mezuzos*.

The issues:

- A) Removing a *mezuzah* when leaving**
- B) Checking *mezuzos***
- C) Responsibilities and liabilities of a borrower**

Sections A reproduced from Halochoscope XIII:39; Section C abridged from Halochoscope XIV:41

A) Removing a *mezuzah*

The Talmud forbids removing a *mezuzah* from a rented property, when moving out. This applies even to the *mezuzah* affixed by this same tenant when he moved in. According to most of the explanations provided, this also applies to a seller. Usually, the new resident should pay the former resident for his *mezuzos* (see section C). According to some, this applies to tenants. A seller has no claim against a buyer for those *mezuzos*. Since they are nailed on, they are included in the sale. Others maintain that this alone might not apply to this type of fixture. However, the presumption that a *mezuzah* is not to be removed might indeed play a role.

In our case, the person moving out is the owner, and the new resident will be his tenant. Even those who might exempt a seller based on one of the following reasons (reason (ii), would apply it here. Furthermore, there might be an obligation to leave the *mezuzos* there based on the assumed rental agreement. If a transaction is made based on an agreement and the buyer finds that it does not live up to what he was led to believe, the transaction is void. Sometimes, one may make an assumption about an unspoken clause. In such cases, the buyer may invalidate the sale if he is disappointed about this as well.

What if one rented an apartment under the impression that there would be *mezuzos* on the door-posts, but found that they were not there? Under normal circumstances, the tenant had no right to the assumption. The owner never had the obligation, because he did not live there. The previous tenant was never part of the transaction with the new tenant. In our case, the previous resident is indeed part of the transaction. The new tenant may not presume that the landlord affixed a *mezuzah* specially for him. However, he may indeed assume that the owner, the previous resident, will not remove the *mezuzos* that were already there. From these presumptions, it is evident that the new resident has some kind of right to the *mezuzos*, based on the requirement to leave them on the door-posts.

The *mitzvah* of *mezuzah* applies to the resident, rather than the landlord. An owner is

Scripturally obligated, and a tenant is Rabbinically obligated. If the *mezuzah* was already affixed, the resident has lost out on the performance of the *mitzvah*. Some ponder the tenant's right to demand that the *mezuzah* not be affixed before he moves in, so he can perform the *mitzvah*. In a case where the new resident is buying the property, assuming that the *mezuzos* are included, he will at least own them. While he lost the performance of the act of the *mitzvah*, he has his own *mezuzos* on his doors. If it is a tenant, the *mezuzos* could conceivably be included in the rent. This might be considered a type of ownership. However, since it is not part of the landlord's obligation, it is more like a loan.

In all cases, the new resident may replace the existing *mezuzos* with his own *mezuzos*, especially if they are nicer. He then gains his own personal *mitzvah*. He would then return the original *mezuzos* to their rightful owner. *Chutz la'aretz*, in the Diaspora, a tenant is only obligated personally after living there for thirty days.

The explanations why one should not remove a *mezuzah* are: (i) *Mezuzah* affords protection to the house. Removing it allows access to destructive forces. (ii) Some add, the incoming Jewish tenant will not be required to affix his *mezuzah* 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 *mezuzah* immediately, the restriction against removal is lifted. (iii) Removal of the *mezuzah* lowers the level of holiness on the door-post; *maalin bakodesh velo moridin*, one may not lower sanctity. (iv) Removal of the *mezuzah* removes the *Shechinah*, divine Presence, from the house, another manifestation of *horada bikedusha*. (v) It lowers the level of *kedusha* of the *mezuzah* 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 *mezuzah* with him on his travels. He had no permanent residence, and wanted a memento of *mezuzah* 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.

If a doorway is painted, the *mezuzah* must be removed. It may only be replaced when the paint has dried and there is no risk of damage to it from the chemicals. Similarly, if the next tenant will not respect the *mezuzah*, or if it is a gentile, the *mezuzah* may not be left on the doorway. While it is indeed dangerous to remove it, in these cases, the respect for the *mezuzah* itself takes precedence. [See Baba Metzia 101b-102a Avoda Zara 14a Yerushalmi Peah 1:1 Menachos 32b, Poskim. Tur Sh Ar YD 291:2, commentaries.]

B) Checking mezuzos

In our case, the person moving needs to check his *mezuzos*. This is also to show respect for them, but only in the immediate present. The purpose of checking is to put them back afterwards. The question is, may he remove them for checking, and once they have been removed and he no longer resides there, may he keep them off the doorways?

The Talmud says that a *mezuzah* on a private residence must be checked twice in seven years. On a public doorway, the *mezuzah* must be checked twice every fifty years.

There are two reasons to check: it might have deteriorated or it might have been stolen. For the latter reason, one should actually glance at the *mezuzah* whenever he passes it. There is a common practice to place one's hand on the *mezuzah*, and many also kiss it. This ensures that the case is intact. It is still possible that the *mezuzah* was stolen, though unlikely. The second reason requires opening it up and examining the lettering. Due to conditions, some locations are conducive to deterioration in a shorter time period. Checking is an obligation, because one may not rely on status quo. The natural deterioration of the materials is always a concern. Nowadays, the *mezuzah* can be wrapped and protected somewhat. However, it will still deteriorate eventually. Depending on the damage, some *mezuzos* can be fixed, while others will need to be replaced.

The obligation to check would seem to apply to the resident, who has the obligation to affix, even if the *mezuzah* does not belong to him. The point of checking is to ensure that the *mitzvah* is being performed correctly. After removing it for checking, the resident need not recite a new *brocha* when re-affixing it. However, the poskim say that if there was a long delay or if it was given to a professional to check, there is a requirement for a new *brocha*. If the *mezuzah* needed to be fixed or replaced, a new *brocha* is required. [See Yuma 11a, Poskim. Tur Sh Ar YD 191:1, commentaries. Chovas Hadar 1:8 11:14.]

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*. Accordingly, he recites the *brocha* on a borrowed *mezuzah*. We alluded to the concept of a *mezuzah* on loan in section A.

Our question is, if one indeed borrowed a *mezuzah*, may he or must he leave it in place when he moves? 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 is 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.

Is the lender also obliged to leave his *mezuzah* on the door-post in question? 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! Assuming he should leave it and does not lose his ownership rights, the *mezuzah* still belongs to the original owner. By occupying the home, the new tenant passively borrows the borrowed *mezuzah*. This raises the issue of *shomer shemasar leshomer*, a guardian handing over the item to a second guardian. Apart from liability issues, sub-loaning 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 Metziah 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 12. YD 391, Daas Kedoshim 1. Chelkas Yaakov II:160. Minchas Yitzchok V:110. Yabia Omer III:18. Shevet Halevi II:159. Beer Moshe III:181.]

In conclusion, the *mezuzos* may be removed for checking, but they must be put back afterwards. They may be replaced with borrowed *mezuzos*, with consent of the lender. If the borrowed *mezuzos* are placed while the first resident lives there, he recites a *brocha*. If he has already moved, he should not recite a *brocha* when replacing them.

On the Parsha Korach 'took' .. [16:1] A house full of *sifrei Torah* – does it need a *mezuza*? [Bemidbar Raba 18:2] Where did the Midrash see this? [Etz Yosef etc.] Perhaps Korach must have 'taken' something that was never meant to be removed! He misrepresented the *mitzvah* of *mezuzah*. A *sefer* is 'taken' to learn from it – as in: *vayikach sefer haberiss*, 'took' the book of the covenant! [ibid.]. A *mezuza* is not 'taken'. It remains in place, guarding the home.

✪ **Sponsored by the Pfeffer family in memory of Leo Ungar, Yehuda Leib ben Yaakov**

z"l, whose *yahrzeit* is the 4th of Tamuz. ♣

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