

Shtar Heter Iska for Cosigners/Co-borrowers

It is imperative that the borrower and cosigner/
co-borrower read the overview and obtain a basic
understanding of the *Iska* transaction

Overview:

- The **purpose** of the *Heter Iska* is to serve as a *shtar*/contract agreement, that funds which according to *halacha*¹ are considered to be given from the cosigner to the borrower are not given as a loan but rather as an *Iska Investment* purchase.
- The **necessity** of using a *Heter Iska* exists even when borrowing from a non-Jewish lender in situations where *halacha* considers the cosigner as having lent money to the borrower. From a *halachic* perspective, under certain circumstances a portion of the money borrowed from the lender is initially considered to have been lent from the bank to the cosigner and afterwards lent from the cosigner to the borrower. Additionally, if at any point during the life of the loan the borrower defaults on payments and the cosigner pays instead, it is considered according to *halacha* as if the cosigner had originally borrowed the principal portion of those payments from the lender and then lent them to the borrower.²
- An *isur ribis*³ is created as a result of the cosigner lending to the borrower, as the borrower may not make bank payments which include interest fees that are according to *halacha* the responsibility of the cosigner. Additionally, when the cosigner made a bank payment, he may not be reimbursed by the borrower the full payment amount, due to the fact that loan payments typically include fees which are partially the cosigner's own responsibility. The borrower reimbursing the full payment amount is a violation of an *isur ribis* because he is considered to have repaid the cosigner more than he has borrowed from him.
- This *Heter Iska* remedies the *ribis* concerns as it renders all funds given by the cosigner to the borrower to be not as a loan, but rather as a purchase payment for a portion of the acquired property and in the borrower's additional assets. Therefore, the *Iska Investment* entitles the cosigner ownership of expected profits in the investment assets equal to the interest payment amounts of his own that he wishes to recover from the borrower.
- The **borrower's** rights are also protected being that the profit entitlement of the cosigner is limited to the amount and the time necessary for the recovery of incurred bank fees.

Instructions:

1. Fill in the blanks of the *Shtar Heter Iska*.
2. The cosigner/co-borrower should give his pen or a similar item such as his keys or phone to the borrower as a *kinyan sudar*⁴.
The borrower should lift the item and then return it.
3. The cosigner/co-borrower should give \$1.00 to the borrower as a nominal *Iska* management fee.
4. The *Shtar Heter Iska* should be signed by both parties.
5. The cosigner/co-borrower should keep the *Shtar Heter Iska* in his possession for the duration of the loan.

¹ Jewish law

² This *halachic* assessment is in accordance with the ruling of *Shulchan Aruch* ('ו"ד ס"ק"ע סעיף א') which is based on the Talmud (ב"מ דף ע"א:). We may explain that the lender who is willing to lend only via the request and with the guarantee of the cosigner, has allowed the cosigner to dictate use of his money, albeit as a loan. The cosigner has exercised an element of control and use of the lender's funds which to a limited extent is considered as if he has received those funds (קבלת יעקב קדושין ס"ב). This perception of the cosigner having taken possession of the funds is further solidified when he subsequently repays the lender. The chain of events results in an overall presentation of the cosigner having originally simultaneously borrowed from the lender and lent the funds to the borrower and is thus deemed *l'halacha* as having done so.

³ The prohibition of taking interest on a loan

⁴ A halachic form of completing a transaction.

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The undersigned [INSERT BORROWER NAME HERE>_____] (hereinafter referred to as “recipient”), has received a mortgage from [INSERT LENDER NAME HERE>_____] (hereinafter referred to as “lender”) in the amount of \$_____, and [INSERT NAME OF COSIGNER/CO-BORROWER/GUARANTOR HERE>_____] (hereinafter referred to as “cosigner”) has signed as cosigner/co-borrower/guarantor for this loan.

Funds or a portion thereof that have been borrowed may be *halachically* considered to have been advanced from the lender to the cosigner and subsequently from the cosigner to the recipient. Additionally, if the cosigner makes any payments to the lender in the future, it may be considered as if the cosigner had originally borrowed from the lender the principal portion of those payments and then lent them to the borrower. Therefore, in consideration of the above, it is hereby mutually agreed that all funds that are *halachically* considered forwarded from the cosigner to the recipient (or on behalf of the recipient) are to be regarded as payment (or payments) for an *Iska Investment* and not given as a loan. As of today, the recipient has transferred ownership of a portion of the purchased property and in all of the recipient’s assets to the cosigner. The said purchase acquires for the cosigner a portion equal to the dollar amount that the cosigner is considered to have forwarded to or on behalf of the recipient. This purchase shall take effect immediately. If, for whatever reason, the entire acquisition or a portion thereof does not *halachically* take effect immediately, then each part of the acquisition shall take effect as soon as possible. Either the transferred funds or the *kinyan sudar* or this *shtar* shall be used as the instrument of the said acquisitions. This purchase is hereinafter referred to as the *Iska Investment*.

It is agreed that the recipient shall manage the *Iska Investment* for the benefit of and on behalf of the cosigner until the cosigner’s profits are realized to an amount equal to the amount of all fees paid to the lender that is associated with the specific principal that is *halachically* considered to have been borrowed by the cosigner from the lender. This includes payments of interest, penalties, fees, or any other payments incurred as a result of said principal. The recipient can sell the property or portions of it and manage all the monies in any way he believes has the ability to generate the aforementioned profits. The recipient has received one dollar from the cosigner as payment for the recipient’s management of the *Iska Investment*. The cosigner’s ownership and rights in the *Iska Investment* are limited to the value of his invested principal and the said profits only.

Termination and buy-back of *Iska Investment*: Once the *Iska Investment*’s value has increased in an amount equal to all of the cosigner’s current and potential accruing fees (as set forth above), the *Iska Investment* shall then obtain the status of a loan owed by the recipient to the cosigner to the effect that any further gains or losses will belong entirely to the recipient. The recipient will then be entitled to earn from the *Iska Investment* an equal amount in profit as the cosigner did. After all the said profits have been realized, the recipient is required to pay the cosigner the combined total of the cosigner’s principal and additional loan fees minus the amount that the recipient has already paid either directly to the cosigner or towards the cosigner’s obligations to the lender. Regarding co-borrowers, the recipient’s payment(s) to the lender which pays off the principal borrowed by the co-borrower shall be considered payment for a prorated buy-back of the *Iska Investment*. Any claims regarding the amount of profit generated by the *Iska Investment* shall be verified by the recipient under solemn oath before and under conditions acceptable to an orthodox Jewish court of law. Any claim of losses must be verified through the testimony of two qualified witnesses in, and under conditions acceptable to an orthodox Jewish court of law. It is agreed that in lieu of said verification, the recipient shall always retain the right to return to the cosigner the cosigner’s total said principal and profit and upon doing so, the cosigner’s ownership in the *Iska Investment* will be terminated.

This *Iska* agreement shall be understood to be in the manner that most facilitates allowing this transaction to go into effect and not violate the Jewish laws of interest. This agreement has been executed in a manner consistent with the principles of *halacha* required for effecting a legal transfer and obligation known as “*Kinyan Sudar*” and shall have contractual validity and be enforceable in court. In the event of any conflict between the terms of this agreement and any terms of any other agreement regarding these funds, the terms and conditions of this agreement shall supersede and prevail. This agreement shall follow the guidelines of the *Heter Iska* written by Reb Mendel quoted in *Sefer Nachlas Shiva* chapter 40.

כל ההסכם (וקנין) נעשה כחומר השטרות הנהוגים בישראל כדת וכדין דלא כאסמכתא ודלא כטופסי שטרות, בב"ד באופן המועיל ביותר על פי דין תורה. והכל שריר וקיים.

Dated: _____ Recipient: _____ Cosigner: _____