355960 - Can a Divorced Woman in ‘Iddah Move From the Marital Home?

the question

A divorce occurred with mutual agreement between the spouses. Can the wife spend the ‘iddah period in her son’s house, noting that the wife is post-menopausal, as she is older? She has not lived in her husband’s house for a long time in the first place; rather she lives with her son wherever the son goes.

Summary of answer

If a divorced woman moves to her son’s house before divorce with her husband’s permission, she must observe ‘iddah in her son’s house. For more, please see the detailed answer.

Detailed answer

Praise be to Allah.

Can a divorced woman in ‘iddah move from the marital home with the husband’s permission?

The woman who is observing ‘iddah following a revocable divorce must stay in the marital home, and it is not permissible for her to leave it or for the husband to make her leave. It makes no difference whether that is based on a mutual agreement between them or the husband gives her permission to move after the divorce, because remaining in the home is a duty enjoined by Allah, may He be exalted.

It says in *Badai' as-Sanai‘* (3/205):

“Allah, may He be exalted, says (interpretation of the meaning): *“Lodge them [in a section] of where you dwell” [at-Talaq 65:6]*. The command to lodge (or accommodate) them is effectively a

prohibition on making them leave and on them leaving themselves, because she is still his wife after the revocable divorce, as she is still bound by the marriage contract in every way. Therefore it is not permissible for her to leave, as was the case before the divorce, but after the divorce she is not permitted to leave even if he gives her permission to leave, in contrast to what is the case before divorce, because the reason why leaving is prohibited after the divorce is the issue of ‘iddah, because ‘iddah is a duty enjoined by Allah, may He be exalted. Therefore the husband cannot cancel it, unlike the case before divorce, because the prohibition on the wife leaving the house is connected to the rights of the husband only; thus he has the authority to give her consent to leave.”

It says in *al-Fawaakih al-Dawani* (2/98):

“It is not permissible – meaning that it is prohibited – for the woman who is observing ‘iddah to go out of her house in which she lived before her ‘iddah. In fact, even if the husband told her to move out before he died or divorced her, and he was accused of being the one who told her to leave, she must return. The same applies even if she was living elsewhere before he died or issued the divorce.

Khaleel said: She should remain in the house where she was living, and she should return if he made her move and was accused of doing so, or she was living elsewhere.”

In *Hashiyat Qalyubi wa ‘Umayrah* (4/56) it says:

“She should continue to live in the same house she was in when the separation occurred, and neither the husband nor anyone else has the right to make her leave, and she herself has no right to leave. Even if she agreed with her husband to move elsewhere when there was no need for that, it is not permissible and the judge should prevent that, because ‘iddah is a duty enjoined by Allah, may He be exalted, and must be observed in that house. Allah, may He be exalted, says (interpretation of the meaning): *“Do not turn them out of their houses, nor should they [themselves] leave [during that period]” [at-Talaq 65:1]*. The houses are described as being theirs to indicate that they are their homes. It says in *an-Nihayah*: The revocably divorced woman is like

any other wife in that regard."

It says in *Sharh Muntaha'l-Iradat* (3/206):

"The revocably divorced woman should stay in the house of the husband who divorced her, but this is not applicable to the widow in mourning whose husband has died. This was stated by Imam Ahmad. That is because Allah, may He be exalted, says (interpretation of the meaning): *"Do not turn them out of their houses, nor should they [themselves] leave [during that period]" [at-Talaq 65:1]*. This applies whether the husband gave her permission to leave or not, because it is one of the requirements of 'iddah, and it is a duty enjoined by Allah, may He be exalted. So the husband has no right to waive any of these requirements, just as he has no right to waive the 'iddah."

Revocably divorced woman moving to another house before the divorce occurred

If the wife had moved to another house before the divorce was issued , for the purpose of living there – and not merely to visit – then if that was with the husband's permission, she may observe 'iddah there.

If she did not move with his permission, then she must go back to the marital home. According to the Shafi'is, that applies unless he gives her permission after issuing the divorce, in which case it is the same as if he gave her permission to move beforehand.

Ash-Shafi'i (may Allah have mercy on him) said in *al-Umm* (5/243):

"If he moves her to live in a house other than the house in which she was living with him , then he divorces her or dies after she moved to the house that he gave her to live in, she should observe 'iddah in that house to which he moved her or gave her permission to move to…

It is the same whether he gave her permission to move to a specific house or he said to her: Go and live wherever you want, or she moved without his permission but then he gave her permission after she had settled in that house. It is all the same with regard to her observing 'iddah in that

house.

If she moved without his permission, then he did not give her permission before he divorced her or died, then she should go back to the house where she lived with him to observe ‘iddah.”

It says in *Tuhfat al-Muhtaj* (8/264):

“Yes, if the husband gives her permission after she arrives there to stay there, then it is the same as if she moved with his permission.

In *Hashiyat ash-Shirwani* it says: With regard to divorce or death of the husband coming after the wife moves to another house, and his permission came after the divorce, it is like her moving with his permission, so she should observe ‘iddah in the second house.”

Ibn Qudamah (may Allah be pleased with him) said:

“If the husband gave her permission to move to another house, or to another city, then he dies before she moves, she must observe ‘iddah where she is, because it is still her house, whether he died before she moved her belongings or after that. That is because it is still her house, so long as she has not actually moved. (*al-Mughni.* 8/169) (See also: *al-Insaf* (9/309)

Based on that, if the woman asked about had moved to her son’s house before the divorce with her husband’s permission, she must observe ‘iddah in her son’s house.

If she moved without her husband’s permission, she must return to the marital home and observe ‘iddah there , unless the husband gives her permission to observe ‘iddah in her son’s house to which she moved without his permission.

She should observe ‘iddah for three months, because the ‘iddah of a post-menopausal woman is three months.

And Allah knows best.