

# FACT SHEET: FAIR HOUSING IN REGARDS TO SEXUAL ORIENTATION & GENDER IDENTITY

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## Protection under the Federal Fair Housing Act

The Federal Fair Housing Act prohibits discrimination in housing, both public and private, on the basis of race, color, religion, sex, national origin, familial status, and disability. Federal laws do not explicitly prohibit housing discrimination on the basis of sexual orientation and gender identity. However, it is still possible that members of the lesbian, gay, bisexual, transgender, or queer (LGBTQ) community may be protected under the Act.

## Protection under HUD's Equal Access Rule

The U.S. Department of Housing and Urban Development's Equal Access Rule, published in 2012, requires HUD-assisted and insured housing programs to be open to all eligible individuals regardless of sexual orientation, gender identity, or marital status.

### Definition of "sexual orientation" under the Equal Access Rule

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

### Definition of "gender identity" under the Equal Access Rule

Gender identity refers to actual or perceived gender-related characteristics.

## LGBTQ PROTECTIONS FOR FAIR HOUSING

### Are there state or local laws which protect LGBTQ members from housing discrimination?

There are numerous state and local laws which provide varying degrees of protection to LGBTQ individuals from housing discrimination. An updated list of state laws can be found on the Human Rights Campaign website ([http://www.hrc.org/state\\_maps](http://www.hrc.org/state_maps)).

At present, there is no statewide protection against housing discrimination based on sexual orientation and/or gender identity in Michigan. However, there are local ordinances which prohibit such discrimination. A complete list of city protections for LGBTQ individuals can be found on Equality Michigan's website (<https://www.equalitymi.org/resources/cities-with-legal-protection>). Cities within the jurisdiction of the FHC of Southeast & Mid Michigan that provide protection for LGBTQ individuals include the City of Adrian, the City of Ann Arbor, Delhi Charter Township, the City of East Lansing, the City of Grand Ledge, the City of Jackson, the City of Lansing, and the City of Ypsilanti.



## How can LGBTQ individuals be protected under the Fair Housing Act?

It is possible that an LGBTQ tenant's experience with discrimination may fall under another protected class.

In some instances, the tenant may be able to bring a claim that they were discriminated against based upon sex. HUD has interpreted the protections on the basis of sex to extend to individuals who are subjected to housing discrimination due to non-conformity with gender norms or stereotypes.

**Example:** *A tenant who dresses in masculine clothes alleges that the property manager at her apartment refuses to make necessary repairs to her apartment. The property manager says that "he only does repairs for real ladies."*

In other cases, the tenant may be able to bring a claim that they were discriminated against based upon a perceived disability.

**Example:** *A gay man is evicted because his landlord believes that he will infect other tenants with HIV/AIDS.*

## What are the provisions of HUD's Equal Access Rule?

HUD's regulations requiring equal access to LGBTQ persons include the following:

- 1) A general equal access provision which requires housing that is funded by HUD or subject to a mortgage insured by the Federal Housing Administration (FHA) to be made available without regard to actual or perceived sexual orientation, gender identity, or marital status,
- 2) clarification that the terms "family" and "household," as used in HUD programs, include persons regardless of actual or perceived sexual orientation, gender identity, or marital status,
- 3) prohibition on owners and operators of HUD-funded housing or housing insured by the FHA from asking about an applicant's or occupant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available, and
- 4) prohibition on FHA lenders from taking into account actual or perceived sexual orientation or gender identity in determining the adequacy of a potential borrower's income.

## Who is protected under HUD's Equal Access Rule?

Any tenant living in HUD-assisted or HUD-insured housing is protected by the Equal Access Rule. This includes all programs such as Public Housing, Section 8 Housing Choice Voucher (HCV), Project-Based Voucher (PBV), Project-Based Certificate (PBC), and Moderate Rehabilitation programs.

**Example:** An underwriter for an FHA-insured loan is reviewing an application where two male incomes are being used as the basis for the applicants' credit worthiness. The underwriter assumes the applicants are a gay couple and, as a result, denies the application despite the applicants' credentials. This action may violate HUD regulations which prohibit FHA-insured lenders from taking actual or perceived sexual orientation into consideration in determining adequacy of an applicant's income.

**Example:** A public housing agency (PHA) asks a woman who has applied for assistance under the Section 8 Housing Choice Voucher program to update her eligibility information prior to the PHA issuing a voucher. She brings another woman with her to the PHA office. While completing program verifications, her companion puts her arm around her. The PHA's occupancy specialist believes that the women are lesbians and denies the woman's application because of perceived sexual orientation. These actions constitute a violation of the Equal Access Rule.

It is important to understand that the Equal Access Rule is not a law or an amendment to the Fair Housing Act, nor does it create any additional federally-protected classes. It is a HUD rule applicable to HUD programs and housing. Therefore, discrimination based upon sexual orientation or gender identity may still be lawful outside of covered public housing areas unless protected by a state or local law.

### **Are private housing providers subject to the Equal Access Rule?**

Private owners become subject to the rule when they participate in the Section 8 Housing Choice Voucher program and execute a Housing Assistance Payments (HAP) contract with a public housing agency (PHA).

### **What should I do if I believe that I've been discriminated against?**

The Fair Housing Center of Southeast & Mid Michigan (FHC) is ready to help with any problem of housing discrimination.

We are a private nonprofit organization providing investigative services (testing), advice, advocacy, conciliation, attorney referrals, and community education for Clinton, Eaton, Ingham, Jackson, Lenawee, Livingston, Monroe, and Washtenaw counties. The mission of the FHC is to end discrimination in housing and public accommodations and to promote accessible, integrated communities.

If you think you have experienced housing discrimination or have a question about fair housing, call us at [877-979-3247](tel:877-979-3247).

You can also fill out a contact form on our website ([www.fhcmichigan.org](http://www.fhcmichigan.org)) and FHC staff will follow up with you to obtain additional information concerning your allegation or complaint of discrimination.

Information provided about allegations or complaints of housing discrimination will be kept confidential.

## Sources

Equality Michigan

["Resources: Cities with Legal Protection"](#)

Fair Housing Center of West Michigan

["Fact Sheet: Fair Housing for LGBT Persons"](#)

Human Rights Campaign

["Maps of State Laws & Policies: Statewide Housing Laws & Policies"](#)

National Fair Housing Alliance (NFHA)

["Modernizing the FHA for the 21<sup>st</sup> Century: 2013 Fair Housing Trends Report"](#)

U.S. Department of Housing and Urban Development (HUD)

["Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity"](#)

["HUD Issues Guidance on LGBT Housing Discrimination Complaints"](#)

["LGBT Housing Discrimination"](#)

["Program Eligibility regardless of Sexual Orientation, Gender Identity, or Marital Status as Required by HUD's Equal Access Rule"](#)