The Opening Doors Toolkit: Fair Housing Self-Advocacy for Older LGBT Adults

The Equal Rights Center

The Equal Rights Center

The Equal Rights Center (ERC) is a national nonprofit dedicated to advancing civil rights in housing, employment and access to public accommodations and government services. Using civil rights testing, education, advocacy and enforcement, the ERC identifies and remedies unlawful discrimination and promotes equal opportunity.

With a national membership, including individuals in all 50 states, District of Columbia and Puerto Rico, and more than 30 years of experience, the ERC is at the forefront of advancing civil rights for all.

The ERC thanks the Retirement Research Foundation for its financial support to help make this toolkit possible. The Retirement Research Foundation is devoted exclusively to improving the quality of life for our nation's older adults, especially those who are vulnerable due to advanced age, economic disadvantage, or disparity related to race and ethnicity.

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Introduction

In recent years, the lesbian, gay, bisexual and transgender (LGBT) community has made significant progress in advancing civil rights. Despite this progress, LGBT individuals continue to be denied equal opportunity in housing. This is particularly challenging for older LGBT adults. With an estimated three million LGBT individuals aged 65 or older in the U.S.,[1] LGBT elders are a substantial and increasingly visible segment of the LGBT community and general population.

The ability to obtain adequate and safe housing of one's choice affects all aspects of daily life including employment and educational opportunities, proximity to friends and family, and access to commercial, government, and social services. Federal law does not expressly prohibit discrimination based on sexual orientation or gender identity in private housing. While some states and a large number of counties prohibit discrimination based on sexual orientation or gender identity, the protections vary across the country, making it especially confusing to know one's right to fair housing.

Recent data confirms that housing discrimination is a serious concern for older LGBT adults. In a 2014 survey, conducted by Services and Advocacy for GLBT Elders (SAGE), 13 percent of LGBT adults aged 45-75 reported experiencing discrimination based on sexual orientation when seeking housing and 25 percent of transgender respondents reported discrimination based on gender identity.[2] LGBT elders are also at greater risk of experiencing in-place harassment. In a survey conducted in 2011, 23 percent of LGBT residents of senior housing reported being harassed by other residents, 14 percent reported being harassed by staff, and 20 percent reported being refused admission or being discharged based on their sexual orientation or gender identity.[3]

In a testing investigation conducted by the Equal Rights Center in 2013, which took place in ten states, 48 percent of older same sex couples seeking independent living housing for older adults were subjected to at least one type of adverse differential treatment when compared with an opposite sex couple seeking identical housing. Older same-sex couples experienced multiple forms of discrimination (such as a higher rent price and fewer housing options available) in 12.5 percent of all tests.[4]

This toolkit is intended to provide guidance to older LGBT individuals who encounter housing discrimination based on their sexual orientation or gender identity. An overview of fair housing laws, particularly as they relate to discrimination based on sexual orientation and gender identity, is provided, as well as information about what to do when you experience discrimination and resources and organizations that can provide further assistance.

What is Fair Housing?

The federal Fair Housing Act (FHA) prohibits housing providers—including landlords, management companies, real estate agents, home sellers, lending institutions, and homeowners' insurance companies—from discriminating against individuals based on:

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Disability

All states and many cities and counties have corresponding laws that provide at least the same protections as the FHA.

Housing discrimination is distressingly common, but woefully underreported. In 2011, among the estimated 4 million fair housing violations, only slightly more than 27,000 housing discrimination complaints were filed with government agencies.

Housing discrimination rarely occurs as a blatant refusal or rejection by a housing provider. Instead, housing providers create barriers to equal housing opportunity by providing different and adverse information regarding availability, cost, amenities and services, terms and conditions for housing, the application process, and follow up. Housing providers have refused to recognize same-sex couples, requiring gay and lesbian partners to apply separately or restricting them from living together. Some housing providers may make degrading or insulting remarks, or otherwise be less inviting or even more hostile to prospective LGBT residents. Where protections against discrimination based on sexual orientation or gender identity exist, these differences in treatment amount to illegal discrimination.

Prohibited activities that constitute disparate or discriminatory treatment when conducted based on someone's membership in a protected class include:

- Refusing to sell or rent available units.
- Misrepresenting availability, by claiming fewer units are available or nothing is available within the prospective tenant's requests.
- Offering differing terms or conditions, such as a higher rental price, greater fees or fewer amenities.
- Steering individuals or couples toward or away from a specific neighborhood or part of a building.
- Imposing different or additional application requirements.
- Stating a discriminatory preference.
- Using threats, intimidation, or coercion.
- Harassing someone sexually, including any unwanted sexual advances, requesting sexual favors, or other unwelcome verbal or physical conduct of a sexual nature, and in some instances, failing to protect an individual from harassment known to be committed by other tenants.
- Making housing otherwise unavailable, such as by adding unrealistic terms.

Who is Protected?

Federal law does not expressly prohibit housing discrimination based on sexual orientation, gender identity, or age in the private housing market. However, in 2012, the Department of Housing and Urban Development (HUD) issued a rule prohibiting discrimination based on sexual orientation, gender identity, and marital status in any HUD-assisted housing. This was a positive first step to recognize the need for federal protections based on sexual orientation and gender.

At the end of 2014, 21 states and the District of Columbia had laws prohibiting housing discrimination based on sexual orientation, and 18 states and the District of Columbia had laws prohibiting housing discrimination based on gender identity. Nearly 200 counties and cities have local ordinances prohibiting housing discrimination against LGBT individuals.

Federal Fair Housing Act

Under the Fair Housing Act, housing providers, including landlords, management companies, real estate agents, home sellers, lending institutions, and homeowner insurance companies, are prohibited from discriminating against persons based on their race, color, national origin, religion, sex, familial status or disability.

Sex as a federal protection refers to discrimination based on one's gender. According to guidance by the HUD, discrimination based on gender identity or gender expression may be gender discrimination in violation of the federal Fair Housing Act.[5]

Familial status is distinct from marital status, and does not protect LGBT couples. Rather, it refers to discrimination against parents or custodians with minor children, and their designees (such as grandparents). There are no federal protections for marital status.

Discrimination often involves different protected classes, which may also rise to a violation of the federal Fair Housing Act. For example, if a gay man is perceived to be HIV+, and is denied housing based on this perception (whether accurate or not), he may can claim discrimination based on a perceived disability. Likewise, an African American bisexual woman who is treated differently because of both her race and sexual orientation can raise a federal race discrimination claim.[6]

HUD LGBT Rule on Equal Access to Housing

In March 2012, HUD issued a rule prohibiting housing providers that receive funds or participate in HUD programs from discriminating against individuals based on their actual or perceived sexual orientation, gender identity, or marital status. HUD-funded programs include, but are not limited to: public housing, federal voucher programs (such as Housing Choice Vouchers, Housing Opportunity for People with AIDS, supportive housing for the elderly and people with disabilities), and Federal Housing Assistance (FHA) programs and mortgages.

The full text of the rule is available on HUD's website at:

http://portal.hud.gov/hudportal/documents/huddoc?id=12lgbtfinalrule.pdf.

State and Local Laws

While federal protections are limited, many states, counties, and cities have laws with additional protections. For example, the District of Columbia Human Rights Act includes protections for nineteen categories—including sexual orientation, gender identity or expression, and age—and is seen as one of the most progressive laws of its kind in the country.

Where sexual orientation is a locally protected class, housing providers are generally prohibited from discriminating against an individual based on their actual or perceived sexual orientation (e.g., gay, lesbian, bisexual, straight).

Gender identity discrimination prohibits discrimination based on the gender someone identifies as, even if it is not the same as their birth gender (e.g, transgender, cisgender).

Gender expression refers to the external characteristics and behaviors that are often associated with being a specific gender (e.g. butch/masculine, femme/feminine).

As of October 2014, the following states prohibit discrimination based on both sexual orientation and gender identity: California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington.

Three states have protections against discrimination only for sexual orientation (but not gender identity or expression): New Hampshire, New York and Wisconsin.

There is no comprehensive list of all county and city nondiscrimination laws. However, the Human Rights Campaign's Municipality Equality Index provides information on the protections for 353 cities around the country. To look up your local jurisdiction, visit the following website:
http://www.hrc.org/campaigns/municipal-equality-index.

Self Advocacy Tips

Understand your legal rights—The more you know about your rights and responsibilities as a tenant or home buyer, the more easily you can spot potential problems early, identify rules that apply and use those rules as tools to resolve those issues.

Identify the Problem—Clearly identify how you are being treated differently from others in your effort to secure housing, and why you think you are being treated differently.

Take notes and keep all documentation—In order to assist with the identification of the issue, you may want to make a written description of the events that took place and retain copies of any policies or documentation from the housing provider. If you have email correspondence with the housing provider, you should save these messages as well.

Be persistent—If you do not hear back from the person who you originally contacted about the housing, try following up with a phone call. If the housing provider continues to refuse to speak to you, then you may eventually have to involve a third party such as the ERC. Keeping a log of your contacts with the housing provider, including your attempts at contact where the housing provider did not respond, is very helpful.

Know when it is time to get outside assistance—If you cannot reach a satisfactory resolution with a housing provider, call one of the organizations listed at the end of this toolkit, and they can advise you on possible next steps.

Depending on the type of discrimination you have experienced, and the laws in your area, different options may be available for what you can do. Even if there are no legal protections where you live, you still may be able to take some action.

Complain to Management

If you think that the discrimination was the result of a rogue employee, rather than the practice of management, you can contact the management company or office and ask to speak with a supervisor, explaining what happened and what you would like for the resolution to be. If possible, follow up any verbal conversation in writing, and ask for any decision on your request to be sent to you in writing.

Be persistent. In your initial written contact, be sure to include a date by which you expect a response. If you do not hear back from the person whom you originally contacted by this date, you may need to take further action.

File a Complaint with HUD

If the discrimination you encountered fits within one of the federally protected categories of the Fair Housing Act, or it took place at housing that is HUD-funded or insured and violated HUD's LGBT Rule, you can file a complaint with HUD by completing the online complaint form (www.hud.gov/complaint), calling the hotline (800-669-9777), or contacting your local HUD office (http://portal.hud.gov/hudportal/HUD?src=/localoffices).

What Can I Do?

For whichever format you choose, you should provide the following information:

- Your name and address
- The name and address of the person or entity your complaint is against (the respondent)
- The address or other identification for the housing involved. If you know of any federal funding that the housing receives, including its participation in a federal program such as the Housing Choice Voucher Program, include this information as well.
- A short description to the alleged violation (the event that caused you to believe your rights were violated)
- The date(s) to the alleged violation; and
- Other information that you believe necessary to support your complaint. Please send copies of relevant documents. Keep original documents, do not send them.

If you need assistance with filing your complaint, or would otherwise like support, you can contact your local fair housing organization. A map of fair housing organizations nationwide is available at:

http://www.nationalfairhousing.org/FindLocalHelp/tabid/2574/Default.aspx

File a Complaint with a State or Local Entity

If there are state or local protections in your area, there may be a mechanism for you complain to a local entity, or file a complaint in state court.

HUD maintains a list of state fair housing laws with LGBT protections, and provides a list of the state enforcement agency to contact if these laws have been violated. This list is available at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination.

Your local fair housing or equality organization should be able to help you navigate the options for what you can do. A map of fair housing organizations across the country is available at:

http://www.nationalfairhousing.org/FindLocalHelp/tabid/2574/Default.aspx.

Work with an LGBT organization

If you are in a region without any protections, there is likely an organization working to make things better in the future. While it may not redress your discrimination, providing your story can help raise awareness and put a human face on an issue that otherwise may not be recognized as a serious problem by local politicians. You should be able to share your experience and maintain whatever level of privacy is most comfortable for you. If you would like to remain anonymous, or otherwise not have your name used in any advocacy or outreach, you should ask about confidentiality before providing any information and be sure to make clear the parameters of how you would like your story shared.

The Equality Federation has a local organization in most states that advocate for LGBT equality. You can find your local Equality group at:

http://equalityfederation.org/members.

What Can I Do?

LGBT community centers around the country provide support and assistance to LGBT individuals on an array of issues. CenterLink maintains a map that can help you identify the center near you:

http://www.lgbtcenters.org/Centers/find-a-center.aspx.

SAGE's National Resource Center on LGBT Aging also maintains an interactive state-by-state data map where you can look for legal and financial resources in your state. This map can be found at:

http://www.lgbtagingcenter.org/resources/area.cfm.

Let others know.

There are many effective ways to raise awareness against companies that refuse to treat people equally. While social media, such as Facebook or Yelp, can be a useful tool, it carries with it inherent risks, such as accidental outing or online bullying. If you are uncomfortable writing a review for a company online, consider speaking with friends and family members, activity group partners, or community members that you feel comfortable discussing the issue with. Informing your community through word of mouth about discriminatory practices can be the most effective tool at your disposal.

U.S. Department of Housing and Urban Development

www.hud.org
Online complaint form: www.hud.gov/complaint
Fair Housing Hotline: 800-669-9777
Contact information for local HUD offices:
http://portal.hud.gov/hudportal/HUD?src=/localoffices

HUD list of states with LGBT protections and the state government enforcement office:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination
Online complaint form: www.hud.gov/complaint
Fair Housing Hotline: 800-669-9777

Services and Advocacy for GLBT Elders (SAGE)

305 Seventh Ave
15th Floor
New York, NY 10001
212-741-2247
http://www.sageusa.org

SAGE is the country's largest organization dedicated to improving the lives of lesbian, gay, bisexual and transgender (LGBT) older adults. SAGE offers supportive services and consumer resources for LGBT older adults and their caregivers, advocates for public policy changes that address the needs of LGBT older people, and provides training for aging providers and LGBT organizations, largely through its National Resource Center on LGBT Aging.

Equality Federation

The Equality Federation has a list of state based organizations that offer guidance and support to LGBT individuals on various different issues, including housing discrimination. A list of these organizations can be found at http://equalityfederation.org/members.

CenterLink

CenterLink is a member-based coalition that supports the development of strong, sustainable LGBT community centers. CenterLink's Directory of LGBT Community Centers contains information about member LGBT Community Centers and member Affliates in the United States and around the world and can be found at http://www.lgbtcenters.org/Centers/find-a-center.aspx.

Lambda Legal

Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV; through impact litigation, education and public policy work. Lambda's help desk provides information and resources regarding discrimination related to sexual orientation, gender identity and expression, and HIV status (www.lambdalegal.org).

National Fair Housing Alliance

The National Fair Housing Alliance (NFHA) is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. A list of member organizations by state is available at this map:
http://www.nationalfairhousing.org/FindLocalHelp/tabid/2574/Default.aspx.

Maps of state and local LGBT protections

Human Rights Campaign:
Statewide Housing Laws and Policies:
http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/statewide_housing_10-2014.pdf.

National LGBTQ Task Force nondiscrimination map:
http://www.thetaskforce.org/nondiscrimination-laws-map/.

Contact the ERC

In addition to conducting systemic investigations and advocacy, the ERC assists individuals with fair housing complaints in the greater Washington, DC area, and provides referrals for complaints about discrimination around the country.

You may fill out the complaint form on the ERC's website at www.equalrightscenter.org/complaint. If mailing or faxing the complaint form, please allow approximately two weeks for an ERC staff member to contact you.

You may also contact the ERC for assistance at:

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11 Dupont Circle N.W., Suite 450
Washington, DC 20036
(202) 234- 3062 (Voice)
(866) 719 – 4372 (Toll Free)
Relay 711
(202) 234 – 3106 (Fax)
www.equalrightscenter.org
complaints@equalrightscenter.org
@EqualRightsCntr

References

1 Nancy J. Knauer, LGBT Elder Law: Toward Equity in Aging, 32 HARVARD L.J. 301, 308 (2009), available on-line at: http://works.bepress.com/nancy_knauer/3.

2 Services & Advocacy for GLBT Elders (SAGE), Out & Visible: The Experiences and Attitudes of LGBT Older Adults, Ages 45-75 (2014), available online at: http://www.sageusa.org/files/LGBT_OAMarketResearch_Rpt.pdf.

3 National Senior Citizens Law Center in collaboration with Lambda Legal, National Center for Lesbian Rights, National Center for Transgender Equality, National Gay and Lesbian Task Force and Services & Advocacy for GLBT Elders (SAGE), LGBT Older Adults In Long-Term Care Facilities: Stories From The Field (2011), available online at: http://nwnetwork.org/wp-content/uploads/2012/08/2010-NSCLC-LGBT-Older-Adults-in-Long-Term-Care-Survey-Report2.pdf.

4 Equal Rights Center, Opening Doors: An Investigation of Barriers to Senior Housing for Same-Sex Couples (2014), available online at: http://www.equalrightscenter.org/site/DocServer/Senior_Housing_Report.pdf?docID=2361.

5 HUD V. TOONE, Charge of Discrimination, available online at http://portal.hud.gov/hudportal/documents/huddoc?id=13HUDVTOONE.PDF.

6 U.S. Dep't of Housing & Urban Dev., Ending Housing Discrimination against Lesbian, Gay, Bisexual and Transgender Individuals and Their Families, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination.

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