

FACT SHEET: FAIR HOUSING FOR LGBT PERSONS



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of West Michigan

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What is fair housing?

Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act (FHA) and Michigan laws protect people from discrimination in housing based on the following *protected classes*: race, color, religion, national origin, sex, familial status, disability, marital status and age. As further detailed below, gender identity and sexual orientation are not protected classes, but are included within sex-based discrimination. Discrimination is illegal in housing transactions such as rentals, sales, lending, and insurance.

What fair housing protections are there for LGBT persons?

Although sexual orientation and gender identity are not currently included specifically as protected classes under federal and Michigan fair housing laws, housing discrimination experienced by a lesbian, gay, bisexual, or transgender (LGBT) person is still covered by the protected class of sex, under the FHA and current interpretation under Michigan law. In addition, some cities and local municipalities have adopted ordinances prohibiting such discrimination.

Further, housing providers that receive funding from the U.S. Department of Housing and Urban Development (HUD), have loans insured by the Federal Housing Administration (FHA), as well as lenders insured by FHA, may be subject to HUD program regulations intended to ensure equal access of LGBT persons.

LGBT Protections Under Law

Federal Fair Housing Act

In February of 2021, HUD announced that it will administer and enforce the FHA to prohibit discrimination on the basis of sexual orientation and gender identity. This memorandum relies on HUD's legal conclusion that the FHA's existing sex discrimination provisions are comparable to those of Title VII of the Civil Rights Act, which bars sex discrimination in the workplace. In *Bostock v Clayton County*, the Supreme Court held that workplace prohibitions on sex discrimination include discrimination because of sexual orientation and gender identity. HUD has now determined that the FHA's prohibition on sex discrimination in housing likewise includes discrimination on the basis of sexual orientation and gender identity.

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 stereotypes.

Example: If a female prospective tenant is denied by a landlord because she wears masculine clothes and engages in other physical expressions that are stereotypically male, then she might be able to bring a claim under the FHA alleging discrimination based on sex.

Additionally, the FHA protects against housing discrimination on the basis of disability. This protection not only applies to individuals with disabilities, but also to people who are regarded by others to have a disability whether or not they in fact have a disability.

Example: If a man is being evicted because he is gay and his landlord believes he will infect other tenants with HIV/AIDS, then the allegation of discrimination may be brought under the FHA based on disability because the man is regarded as having a disability, HIV/AIDS.

State and Local Fair Housing Laws and Ordinances

The Michigan Department of Civil Rights has the authority to process all complaints alleging discrimination on account of gender identity and sexual orientation as complaints of discrimination because of sex, and therefore is prohibited under the Elliott Larsen Civil Rights Act. Some local ordinances in west Michigan prohibit housing discrimination on the basis of sexual orientation and/or gender identity, specifically in the cities of Cadillac, Douglas, East Grand Rapids, Grand Rapids, Holland, Mt. Pleasant, Saugatuck, Saugatuck Township, and Traverse City. Over 40 Michigan cities have such protections.

HUD's "Equal Access" Rule

On February 3, 2012, HUD published the Final Rule entitled, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity," commonly referred to as the "Equal Access Rule." Through this final rule, HUD implements policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. In particular, the Equal Access Rule states that a determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration (FHA) shall be made without regard to actual or perceived sexual orientation, gender identity, or marital status.

**Note: the Equal Access Rule is not a law, or an amendment to the FHAct, and the Rule does not create any additional federally protected classes. It is a HUD Rule applicable to HUD programs and housing.*

Key Points of the Equal Access Rule

- It clarifies that "families" otherwise eligible for HUD programs cannot be excluded because one or more members of the family is LGBT, in a same-sex relationship, or perceived to be an individual in such a relationship.
- It prohibits owners and operators of HUD assisted housing or housing with HUD-insured financing from inquiring about the sexual orientation of an applicant for housing or a current occupant of the housing.
- It prohibits lenders from using sexual orientation as a basis to determine a borrower's eligibility for Federal Housing Administration (FHA) insured mortgages.

Housing Covered by the Equal Access Rule

The Equal Access Rule applies to all of HUD's housing programs, including both HUD-assisted and HUD-insured projects. Such programs include: Section 8 (Housing Choice Vouchers), Community Development Block Grants (CDBG), Public Housing, Housing Opportunities for Persons with AIDS (HOPWA), Supportive Housing for the Elderly and Persons with a Disability, McKinney-Vento, FHA insured loans, and many other HUD programs.

Examples of Possible Violations of the Equal Access Rule

- A property manager who oversees an apartment operated with HUD funding refuses to rent an apartment to a prospective tenant who is transgender. If the housing denial is because of the prospective tenant's non-conformity with gender stereotypes, it may constitute as an infraction under the Equal Access Rule.
- An underwriter for an FHA insured loan is reviewing an application where two male's 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 scenario may violate HUD regulations which prohibit FHA-insured lenders from taking actual or perceived sexual orientation into account when determining adequacy of an applicant's income.

Where can I find more information?

If you have additional questions about fair housing law and/or specific protected classes, please contact the Fair Housing Center office. Further information on the Equal Access Rule can also be accessed at:

[https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq# HUD%E2%80%99s Equal Access.](https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq# HUD%E2%80%99s Equal Access)