



# NORTHWEST FAIR HOUSING ALLIANCE

Presented by :

Shannon Bedard,  
Northwest Fair Housing Alliance

Northwest Fair Housing Alliance  
35 W. Main Avenue, Suite 250  
Spokane, WA 99201

Ph 1-509-325-2665  
Fax 1-866-376-6308

[www.nwfairhouse.org](http://www.nwfairhouse.org)

[www.sexdiscriminationinhousing.org](http://www.sexdiscriminationinhousing.org)

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# 50

CELEBRATING EQUALITY  
THE FAIR HOUSING ACT  
**1968 - 2018** *fiftyyears*

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# NWFHA-

Private Non-Profit

Founded: Sept. 1994 (24 yrs. Sept.)

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4 full time, 2 part time staff

Funding: HUD grants

Serve 17 counties of Eastern WA

Provide: Education, Outreach & Advocacy

File complaints w/ HUD & WA State Human Rights Commission--  
allegations of Housing Discrimination

Conduct Testing for Housing Discrimination

# Why is Fair Housing important in your work?

- You have Fair Housing responsibilities
- It's good for your business, community, residents, neighbors
- It aligns with your mission and values...  
(welcoming, professional, creates the largest pool of qualified applicants or buyers...)

## It's the law.

(Federal & WA State)

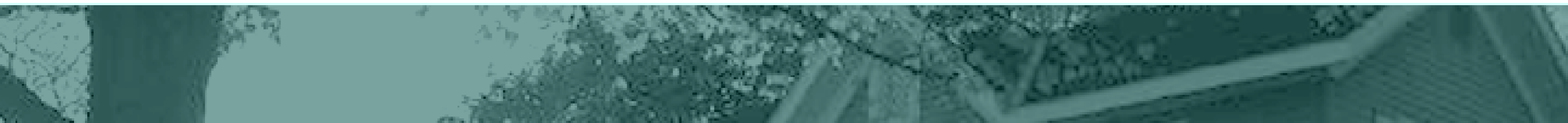
- You don't want to spend a lot of time or money involved in a Fair Housing Complaint.



# What is Fair Housing?

The Fair Housing Act protects people from discrimination when they are renting, buying or securing financing for housing.

**Fair Housing means  
Equal Opportunity in Housing**



# The Fair Housing Act

The federal Fair Housing Act (**1968**) prohibits housing discrimination based on:

- race,
- color,
- national origin,
- religion,
- sex (**1974**),
- disability, and
- familial status –presence of children under the age of 18 in the household, pregnancy, securing custody, and designee of custodian (**1988**).



# Housing Covered by the FH Act

"Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

This definition applies to both publicly and privately owned dwellings.

# Covered Transactions

- Advertising
- Rentals/Sales
- Terms & Conditions (contract, rules, policies)
- Mortgage Lending & unsecured loans for housing purposes
- Homeowners Insurance
- Underwriting, Appraisal
- Design & Construction
- Zoning



# Who must comply?

## Any person and/or entity...

...involved in the **rental** or **sale** of a dwelling or the advertisement of a dwelling

...involved in the **design** & **construction** of new dwellings

...involved in other real estate related transactions such as **mortgage lending**, property & hazard **insurance**, **zoning**, municipal services



# Examples

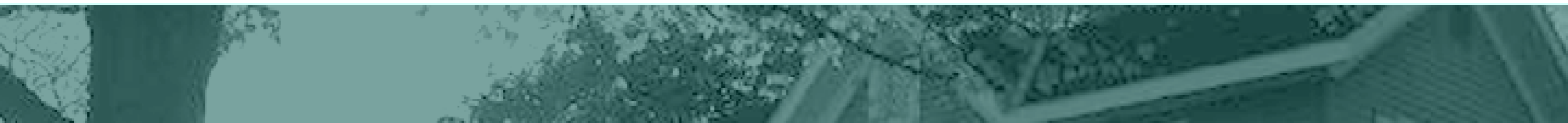
- Property Owners/Sellers
- Property Managers/Management Companies
- Property Maintenance Staff
- Real Estate Brokers or Agents
- Homeowners/Condominium Associations
- Public Housing Authorities & PHA Staff
- Housing Developers & Contractors
- Mortgage Lenders & Financial Institutions
- Advertising Media
- Insurance Companies

# HUD funded, FHA insured loans

In addition, housing providers that receive HUD funding or have loans insured by the Federal Housing Administration (FHA), as well as lenders insured by FHA, are subject to **HUD's Equal Access Rule**, which requires equal access to HUD programs without regard to a person's actual or perceived sexual orientation, gender identity, or marital status.

# **Fair Housing Act covers Sex/Gender**

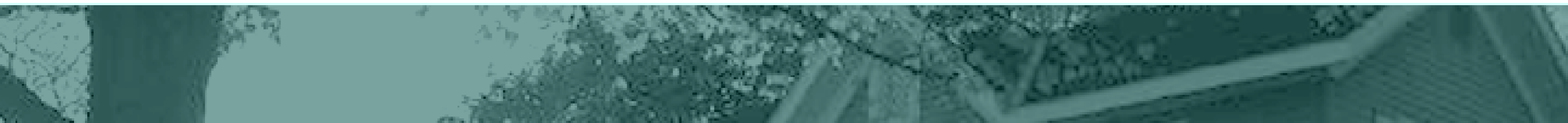
- Female/male
- Sexual Harassment and assault
- Domestic violence
- Non-conformity with gender stereotypes



# Types of discrimination

## Overt

**Example:** a housing provider doesn't rent to female head of households because the property "needs a man to take care of it."



# Types of discrimination

## Unequal Treatment

Application of practices, policies, and procedures in an inconsistent fashion

May be intentional or unintentional, but the inconsistency in the application of policies and procedures will result in disparate or differing treatment

**Example:** a woman is told the mortgage application fee is \$500, while a man is told it is \$250.

# Types of discrimination

## Disparate Impact (a discriminatory effect )

A facially neutral housing policy, procedure or practice which disproportionately affects a protected class.

The theory is that, even when consistently applied, **x protected class** may be disproportionately affected by the policy as the overwhelming majority of **x protected class** is impacted.

### Example:

A policy of not renting to anyone who has a domestic violence history disproportionately affects women because women are the overwhelming majority (86.5%) of DV victims.



Discrimination  
“because of sex”  
female/male



# 1974 FHAct added “Sex”

Its intent was to challenge the way Landlords and other housing providers had used stereotypes to make it difficult for women to obtain housing...

“the assumption that men could perform these [homeownership] tasks while women could not is just the sort of discrimination based on sex that we are talking about.” Sponsor: Sen. William Brock, R-TN

“The Fair Housing Act: 35 Years of Evolution,” Tracey McCartney and Sara Pratt, April 1, 2003, *Tennessee Housing Outlook*, Volume 6, Issue 1, Spring 2003, <http://bit.ly/1orXzD8>.

# Sex discrimination in housing

## Examples

- Renting to “bachelors” only
- A housing provider who is willing to speak to a man, not a woman about the terms of their lease
- Renting an apartment to female roommates but not to male roommates
- A woman who inquires about a home loan is told by the lender to “come in when you have your husband with you”
- Charging male residents higher security deposits
- Refusing to rent to a person whose gender identity is ambiguous

# Sexual Harassment is Housing Discrimination



# History



**Fair Housing Act (FHA) bans discrimination based on race, colour, religion and national origin**



**Amendment to the FHA adds sex as a protected class**



**First federal sexual harassment in housing case**



**US Department of Justice begins taking on harassment cases**



**US housing agency formally defines sexual harassment in housing for first time**

*<http://www.bbc.com/news/world-us-canada-42404270#>*

# Sexual harassment in housing

...includes demands for sex or sexual acts in order to buy, rent, or continue renting a home.

It also includes other unwelcome sexual conduct that makes it hard to keep living in or feel comfortable in your home.

# **All forms of harassment “because of SEX” are prohibited:**

- harassment of a sexual nature by a person of the same or different gender as the targeted person
- harassment regarding gender identity-- actual or perceived
- harassment of a sexual nature because a person is transgender



# Quid Pro Quo: this for that

...involves subjecting a person to an unwelcome request or demand and making submission to the request or demand a condition related to the person's housing.

## Elements:

- Subjected to demand for sexual favor
- Experienced the demand because of sex
- Housing benefits conditioned on performance

# Quid Pro Quo

## Examples:

- Demand for sex in lieu of rent
- Repairs done only if s/he'll pose for porno, perform a sex act, strip, etc.
- Requiring s/he go on a date to get the lease renewed
- Demand for sexual favors to access an emergency shelter, be approved for tenancy, pass housing inspection, remain in tenancy, not get evicted, etc.



# A woman's choice - sexual favours or lose her home

11 January 2018

<http://www.bbc.com/news/world-us-canada-42404270#>

By Jessica Lussenhop, BBC News, North Carolina





# Hostile Environment

...involves subjecting a person to unwelcome conduct that is sufficiently severe or pervasive such that it interferes with or deprives the person of the right to use and enjoy the housing.

## Elements:

- Subjected to verbal or physical conduct of sexual nature
- Subjected to because of sex
- Conduct unwelcome and
- Sufficiently **severe** and **pervasive**

# Hostile Environment

## Examples:

- Unwanted touching, sexual advances, lewd sexual jokes,
- Showing porno, degrading sexual comments, sexting
- Hidden video cameras, etc.

# Hostile environment:

Have you ever heard someone speak about a woman as though she's an object?

Man, I wouldn't mind borrowing **that** for an evening...



<http://www.robot-hugs.com/harassment/>

# Harassment & Liability

- **Direct:** “ a person is directly liable for his/her own discriminatory housing practices...liability for one’s own conduct.”
- **Vicarious liability:** “failing to take direct action to correct and end a discriminatory housing practice by a 3rd party, where the person knew or should have known of the discriminatory conduct and had the power to correct it...”



# Examples

**The following may be examples of sexual harassment in housing:**

- My landlord made a lot of comments about having sex with me. I ignored him. When I fell behind on rent, he said there was another way I could pay. I said no and he evicted me.
- The housing authority inspector wouldn't approve the apartment I wanted to rent with my voucher unless I performed a sexual act on him. I agreed in order to get my family off the street.
- The maintenance man won't fix anything in my apartment unless I have sex with him. I don't know what I'm going to do about the broken heater when it gets even colder.

# Examples

**The following may be examples of sexual harassment in housing:**

- I went to look at a home to rent and the owner told me he would lower the rent if I had sex with him.
- I wanted to buy a home. When I went to look at it, the loan officer grabbed my breasts. I said no and left immediately. I never heard about the home or the loan again.
- The security guard in my apartment building has been talking about my body and sending me naked pictures. I asked him to stop. I came home one day and found him naked in my bed.
- The owner of the home I rent makes comments about my body, clothes, and the sexual acts he wants me to perform on him.

# Who are we mostly talking about?

Renters

Low income woman

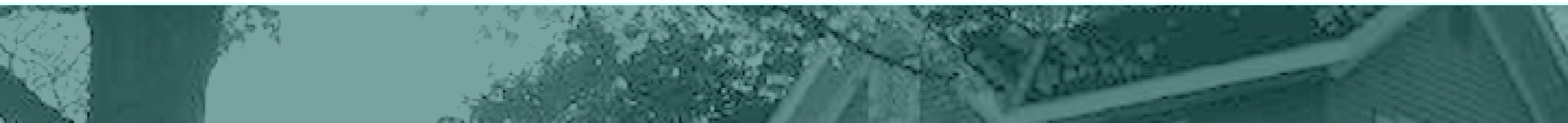
Women in racial minorities

Single mothers with children

Women with disabilities

Immigrant women

**Vulnerable because of sex & class**



# So why not just leave?

- Limited housing options (especially rural)
- Limited finances
  - Moving is costly: application fees, first & last month's rent, security deposit, moving truck, utility set up etc.
- Low availability of affordable housing
- Living in subsidized housing with long waitlists
- Lack of transportation
- Disability and mobility limitations
- **KIDS!**
  - Disrupts school, friends, activities, community ties...

“...The victim often tolerates the actions and complies with the sexual demands because the perpetrator literally holds the keys to shelter.”

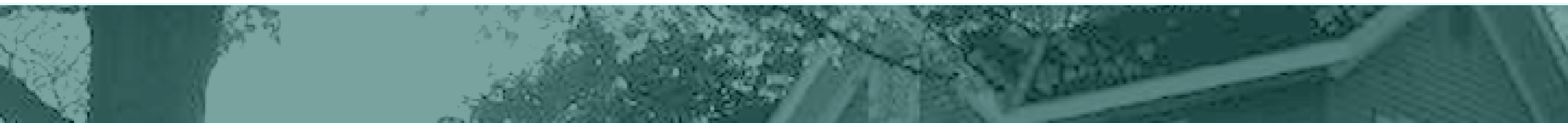
**“Home is no Haven; An analysis of Sexual Harassment in Housing”**  
1st survey 1987 by Regina Cahan

# Common tenant responses

## “Stuck” & with the burden of proof...

- Add extra locks
- Turn off the lights and TV when home
- Pretend not to be home if someone knocks
- Change their routines
- Get a male roommate
- Avoid the manager/maintenance/LL
- Break lease and move
- Concede

# Domestic Violence(IPV) & Housing Discrimination



# Stats:

- 86%(+) of IPV is against a woman,
- 1 in 4 women experience IPV
- Women are 5x as likely as men to experience IPV

**Women** constitute the vast majority of domestic violence victims, therefore, policies targeting such victims have a **disproportionate impact** on women and thus constitute sex discrimination under the Fair Housing Act.



# FH Act & DV Situations

## Overt

Discriminatory policies explicitly treating women and men differently

## Unequal Treatment

- Treating DV victims differently than victims of other crimes
- Applying a policy to evict households for criminal activity selectively against women who have been abused by their partners
- Applying the policy “of not evicting DV victims” differently between female victims and male victims

# FH Act & DV Situations

## Disparate impact (discriminatory effect )

A facially neutral housing policy, procedure or practice which disproportionately affects a protected class.

The theory is that, even when consistently applied, **WOMEN** may be disproportionately affected by a policy regarding DV as **they are the overwhelming majority of victims.**

## Example:

A woman who is a victim of DV

+

In a Lease w/ “Zero Tolerance” crime policy

+

Property damage by perpetrator not on lease



EVICT her

# Example:

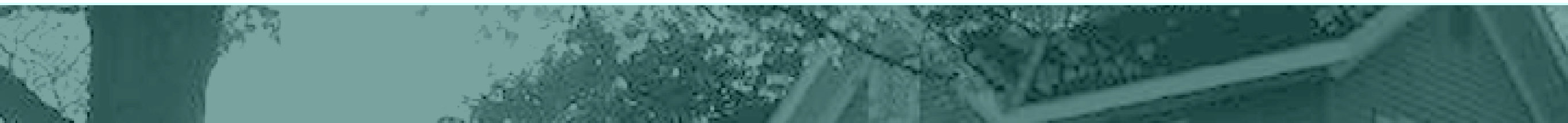
A female survivor of DV history  
+

Housing provider policy of not renting to  
any person with history of DV



Refusal to rent to her (female victims)

# Housing discrimination: Non-conformity to Gender stereotypes



# **The Fair Housing Act**

**Does not include  
sexual orientation  
or  
gender identity  
as a protected  
basis.**

**However...**

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discrimination](https://www.hud.gov/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination)

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## If for Example:

A housing provider refuses to rent to an LGBT person because s/he believes the person acts in a manner that does not conform to her/his notion of how a person of a particular sex should act.

The LGBT person may pursue the matter as a violation of the Fair Housing Act's prohibition of sex.

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discrimination](https://www.hud.gov/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination)

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# Stats:

- 1.6 million homeless youth
- 20-40% identify as LGBT
  
- 1 in 5 Transgender individuals have been denied a home/apt.
- 11% have been evicted because of being transgender
  
- 1 in 3 transgender persons have been turned away at shelters
- 22% who were admitted report experiencing sexual assault by staff or other residents
  
- 42% of transgender persons facing homelessness have been forced to stay in a shelter as the wrong gender

Injustice at Every Turn, Trans Survey 2011 & 2015, (6,500 & 27,000 participants)

# HUD examples:

- A gay man is evicted because his landlord believes he will infect other tenants with HIV/AIDS. This situation constitutes illegal **disability discrimination** under the Fair Housing Act because the man is perceived to have a disability, HIV/AIDS.
- A transgender woman is asked by the owner of her apartment building not to dress in women's clothing in the common areas of the property. This is a violation of the Fair Housing Act's prohibition of sex discrimination.

# HUD examples:

- A property manager 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 constitutes illegal discrimination on the basis of sex under the Fair Housing Act.
- A female prospective tenant alleges that a landlord refused to rent to her because she wears masculine clothes and engages in other physical expressions that are stereotypically male. If true, this may violate the Fair Housing Act's prohibition of discrimination based on sex.

# HUD examples:

- An underwriter for an FHA-insured lender is reviewing a loan application by two males; both 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 fact that the applicants meet all requirements for the loan. This violates **HUD's Equal Access Rule**, which prohibits FHA-insured lenders from taking **actual or perceived** sexual orientation into consideration in determining adequacy of an applicant's income.

# State & Local Laws:

Finally, many state, city, and county laws specifically include sexual orientation and gender identity as protected classes.

You may wish to contact your state or local human rights agency to determine coverage under those laws.

## **In Washington State, RCW 49.60 (WLAD)**

**Washington State Human Rights Commission - (360) 753-6770**

- **Bans sexual orientation housing discrimination**
- **Bans gender identity/expression housing discrimination**



# Best Practices

Non discriminatory ads/publicity/website, etc.

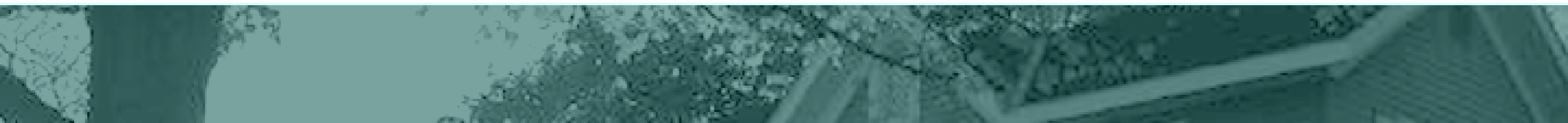
Provide standard, neutral and consistent criteria to all applicants and residents for services, terms or conditions

Fair Housing education for all leasing staff, administrators, service providers, managers.

Policy / Facility postings- “Our agency follows the Fair Housing Act...We do not tolerate harassment because of someone’s protected class....”

Act promptly in response to a complaint, document.

Do not evict survivors of domestic violence (yes, they still need to maintain the lease and pay rent.)



# Resources

HUD Memo Nov. 17, 2008

*Questions and Answers on Sexual Harassment under the Fair Housing Act*

HUD Memo Feb. 9, 2011

*Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (VAWA)*

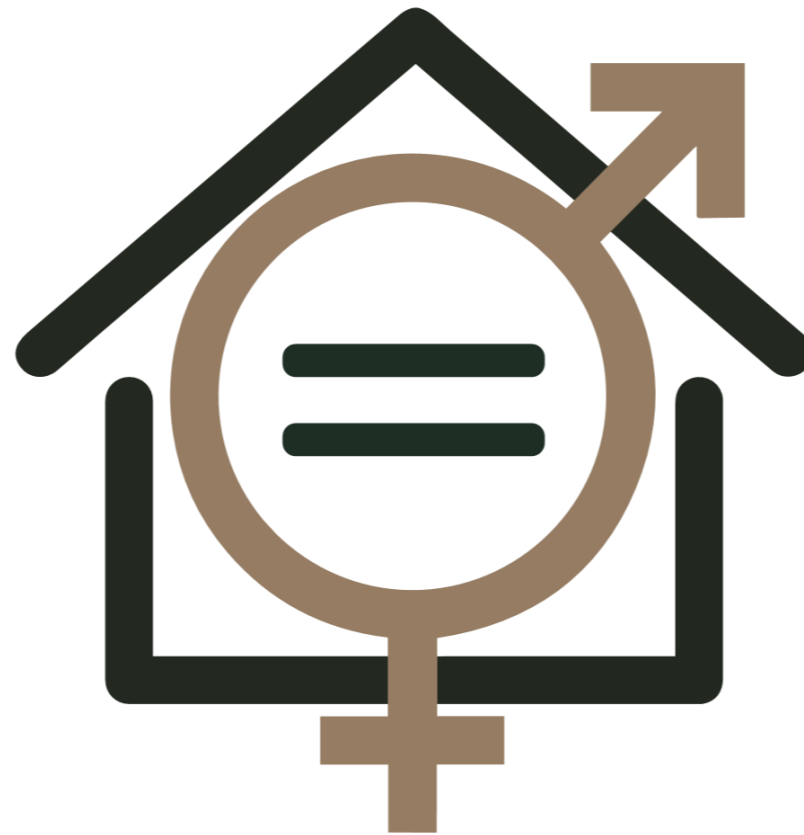
# **DOJ— SEXUAL HARASSMENT IN HOUSING INITIATIVE- (SHHI) LAUNCHED 10/2017**

## **GOALS:**

- To increase awareness about sexual harassment in housing and that it is against the law
- To increase awareness DOJ investigates and files lawsuits about sexual harassment in housing
- DOJ works with other parts of the government, such as HUD to help victims of sexual harassment in housing—enforcing the FH Act .

# NWFHA new website:

[www.sexdiscriminationinhousing.org](http://www.sexdiscriminationinhousing.org)



**Thank you for attending &  
celebrating the 50<sup>th</sup> anniversary  
of the FH Act.**



[www.nwfairhouse.org](http://www.nwfairhouse.org)