



NORTHWEST FAIR HOUSING ALLIANCE

Presented by :

Shannon Bedard,
Fair Housing Specialist
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

www.sexdiscriminationinhousing.org

*This presentation was created by the Northwest Fair Housing Alliance for use by fair housing advocates for training, education, and outreach purposes.
Development of these materials was funded in part by an EOI-G Grant # FEOI160030 from Housing & Urban Development's (HUD's) Education & Outreach Initiative Programs.
Grant Term: 12/1/16-5/31/18 Northwest Fair Housing Alliance is solely responsible for the accuracy of the statements and interpretations contained in this publication.*

Together we live better; including the LGBTQ community

50 *fifty* years
CELEBRATING EQUALITY
THE FAIR HOUSING ACT
1968 - 2018



What is Fair Housing?



Why is it important in your work?

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.

What housing transactions are covered by the Fair Housing Act?

- Renting
- Buying
- Selling...



Who must comply?

Any person and/or entity who...

- Advertises
- Rents
- Sells...

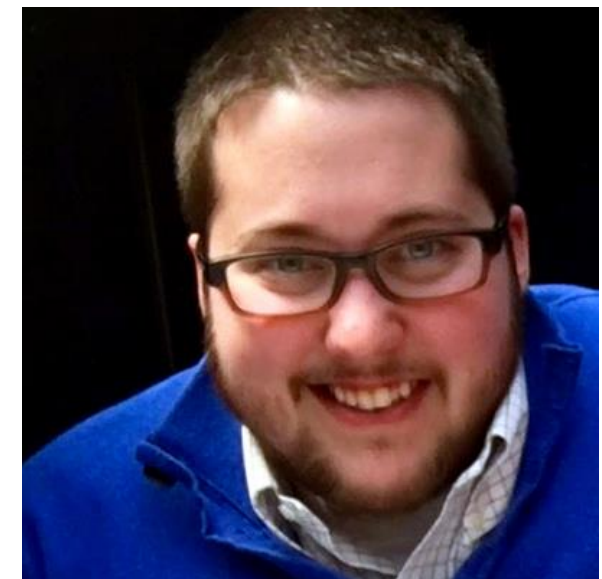


Examples:

Realtors

Property managers

PHAs...



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.**



Overt discrimination

Examples based on sex/gender:

A housing provider refuses to show available apartments to a qualified female couple.



A Landlord advertises and rents to “bachelors” only.

A manager refuses to rent to anyone whose sex/gender identity is ambiguous.

Unequal Treatment **discrimination:**

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.

Examples:

Heterosexual tenants are allowed to use the apt complex's community space for wedding receptions. Tenants who are Gay or Lesbian are not.

A management company rents apts to female roommates, but not to male roommates.

LGBT applicants are charged higher security deposits

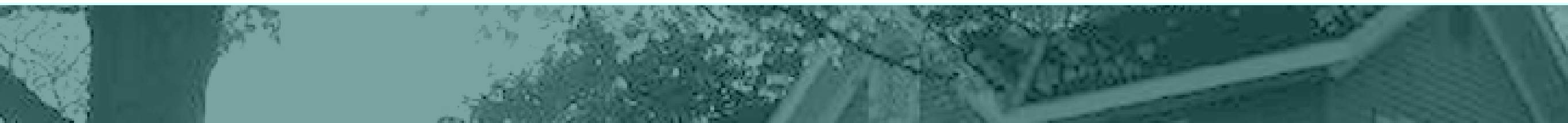


Disparate Impact **discrimination** (discriminatory effect)

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.

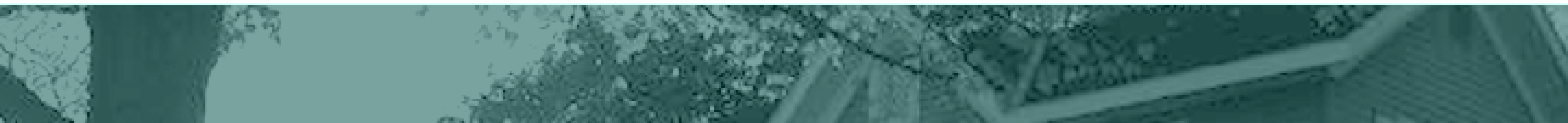
Example:

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.



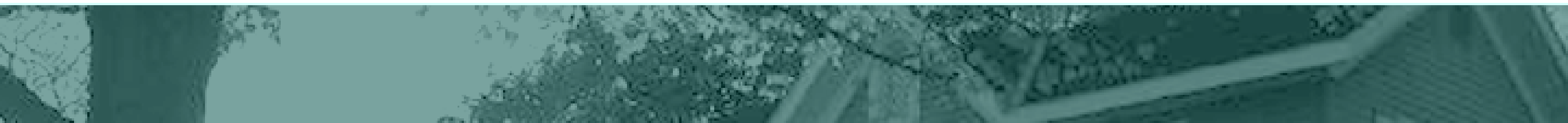
History of “Sex”

- In **1974**, Congress amended the FHA to ban discrimination in housing based on **SEX**: being male or female.
- **Sexual harassment** upheld by Supreme Court as a form of prohibited sex discrimination.
- **Domestic Violence** falls under the protection of sex because of its disproportionate impact on women.



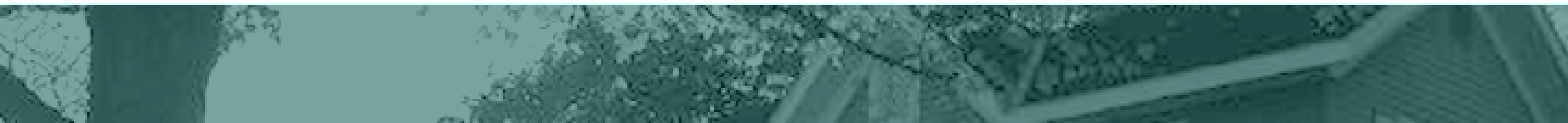
Sex expanded

- 2010, HUD, expanded recognition to complaints filed under sex discrimination because of **gender non-conformity** with **gender stereotypes**.
- Since issuing this guidance, HUD has pursued close to 200 cases of housing discrimination from **LGBT persons**.
- Most involved discrimination because of non conformity with gender stereotypes, especially from **transgender persons**.



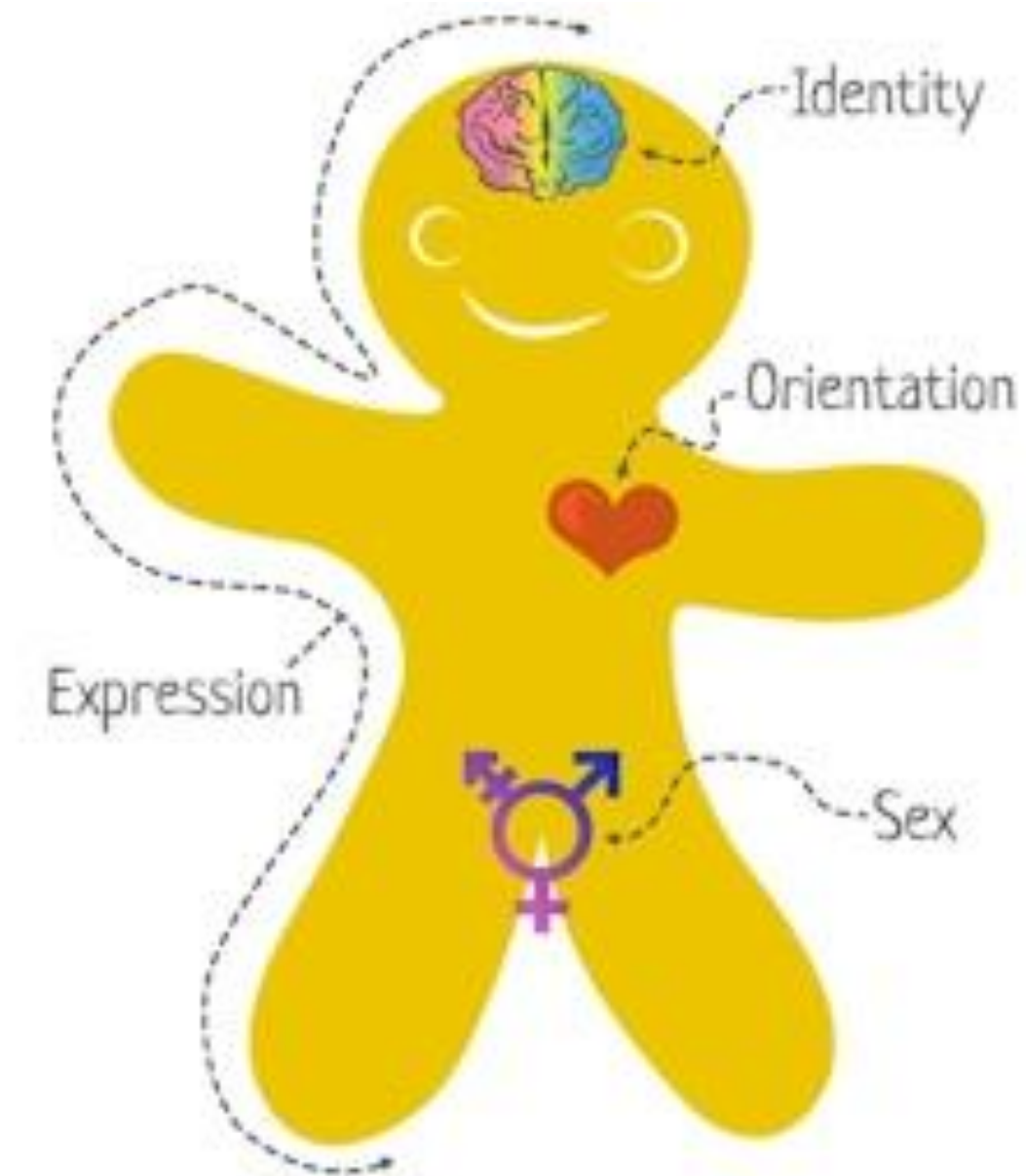
Sex expanded

- 2012, HUD issued regulations explicitly prohibiting discrimination in federally funded housing programs and FHA lending based on **sexual orientation, gender identity, and marital status**.
- “**LGBT Equal Access Rule**” requires federally assisted housing, programs and FHA insured mortgages be provided without regard to actual or perceived sexual orientation, gender identity or marital stats.



Terms

- Gender Identity
- Gender Expression
- Sexual Orientation
- Sex
 - External parts
 - Internal parts
 - Chromosomes
 - Hormones



Terms

- Sex
- Gender
- Sexual orientation
- Gender identity
- Gender expression
- Transgender
- Gender transition
- Gender dysphoria
- Cisgender



Who is covered by HUD's Equal Access Rule?

- HUD assisted housing providers
- FHA insured housing providers
- FHA lenders
- Private, non-HUD subsidized dwellings are NOT covered, however, there are many state laws that do cover LGBT persons from housing discrimination





Eligibility based on:

- Income,
- Annual Certifications,
- All household members listed on the lease



Inquiries

- EA Rule prohibits inquiries of an applicant or occupants sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available
 - Broad coverage: owners or administrators of HUD-assisted or insured housing, approved lenders in an FHA mortgage insurance program and any (or any other) recipient or sub-recipient of HUD funds.

EA Rule does NOT prohibit

- Voluntarily **self-identifying** one's own sexual orientation or gender identity
- Lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms



FH Act and The LGBT Rule



- The Fair Housing Act does not specifically include sexual orientation and gender identity as prohibited bases.
- However, if the rule is violated, a LBGT person's experience with sexual orientation or gender identity housing discrimination may still be covered by the Fair Housing Act.

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

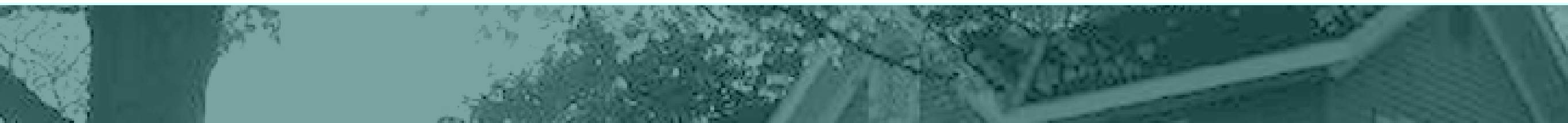
https://www.hud.gov/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination

Example

- A gay man applies for an apartment in a building that was recently renovated with HUD HOME funds. He lists his same sex partner as his spouse and co-tenant. Both men are income eligible and have no criminal history.

The building manager denies the application and says gay men are not welcome there since there are families with children in the building.

Violation

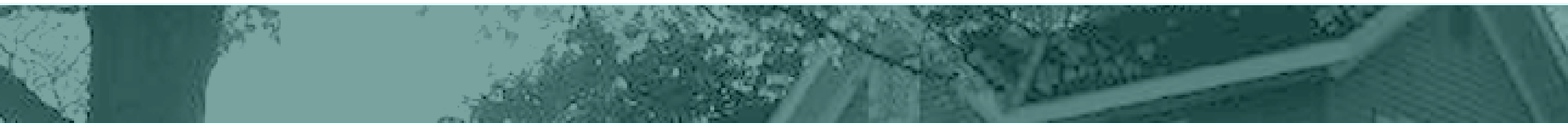


Example

- A single woman lives alone in a one-bedroom apartment in public housing. The building manager runs into her at the corner store and sees that she is holding hands with another woman.

The next day, the building manager tells the tenant that she will be evicted for immoral behavior.

Violation. NOTE: Rule Applies throughout tenancy

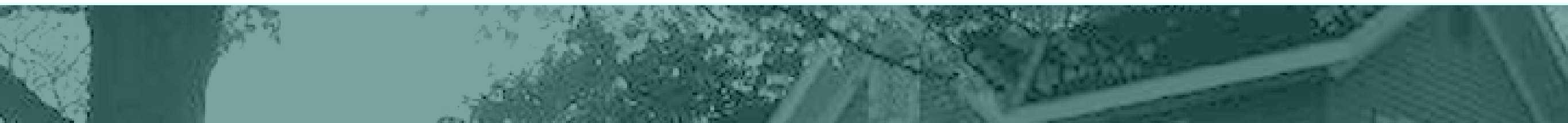


Example

- A petite woman walks into a rental office at a HUD-assisted apartment building. She is wearing traditionally masculine clothing. The rental agent asks “Are you a lesbian or transgender or something?”

The agent then says that she is worried that other tenants may harass or harm the woman based on her choice of dress and “lifestyle.”

Violation. Regardless of intentions—can not inquire.



Example

- A woman comes to a HUD-funded shelter seeking services and discloses that she is transgender.

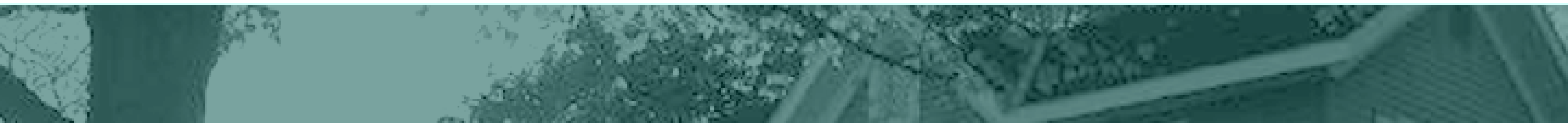
The intake coordinator at the shelter informs her that the shelter does not serve transgender individuals and turns her away.

Violation.

May not refuse services.

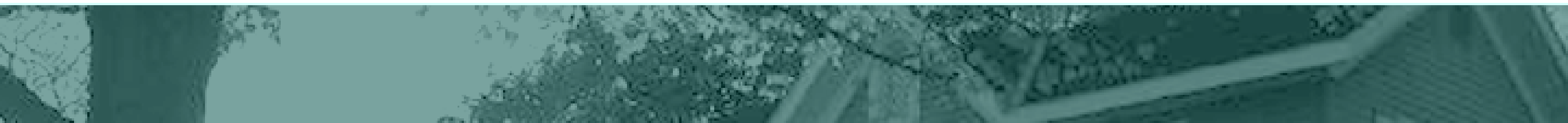
Must be given equal access and services.

If space is sex segregated, consistence with Rule, it would be prudent to provide hotel vouchers or access to a private bathroom considering safety issues trans persons face.



Exemptions

- HUD-funded faith based organizations do not have exemptions for exclusion of LGBT individuals.
- No religious organization is required to participate in HUD programs.



FHA-approved lenders



- Prohibited from basing eligibility determinations for FHA-insured loans on actual or perceived sexual orientation or gender identity.

(Prior regulation listed only race, color, religion sex national origin, familial status, handicap, marital status and source of income as prohibited characteristics to consider.)

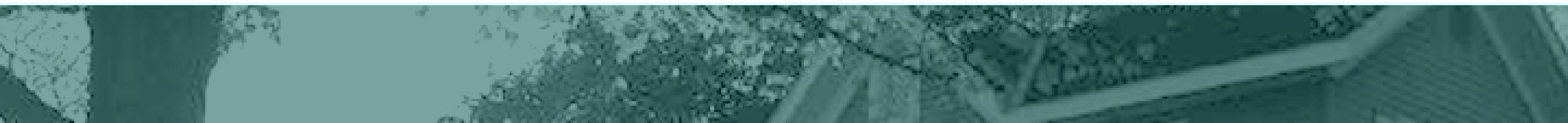


A loan applicant applies in person for an FHA-insured loan with a private bank. She brings another woman with her. Her companion puts her arm around the loan applicant's shoulder during the process of filing out the application forms. The loan officer believes that the women are a lesbian couple. The loan is denied because of the bank employee's perception of the applicant as a lesbian.

Violation

An applicant applies for an apartment at a building that receives HUD assistance. When the applicant enters the rental office, she is wearing a pair of woman's shoes and a skirt. The leasing agent believes that the applicant was designated male at birth and denies the applicant an apartment because he believes she is transgender.

Violation under both FH Act and the EA Rule: applicant was denied because of gender identity, and also because non-conformity with sex stereotypes which is sex discrimination.



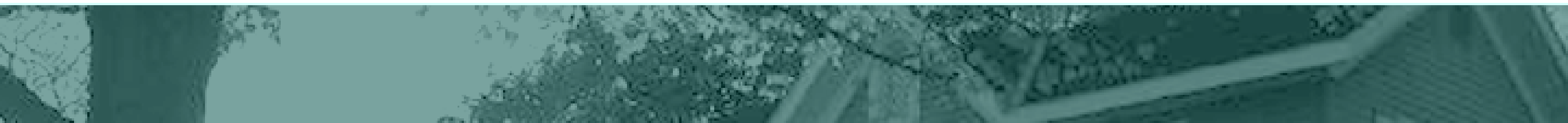
Sexual harassment is also a form of sex discrimination

...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 targeting 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:

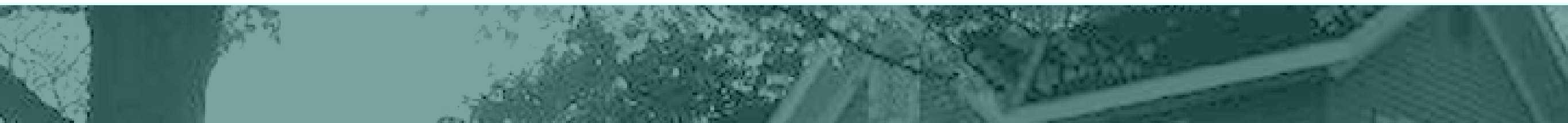
- Demand for sex in lieu of rent
- Repairs done only if s/he'll pose for porno, perform a sex act, strip, etc.
- Requiring s/he go on a date to get the lease renewed
- Demand for sexual favors to access an emergency shelter, be approved for tenancy, pass a housing inspection, remain in tenancy, not get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

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:

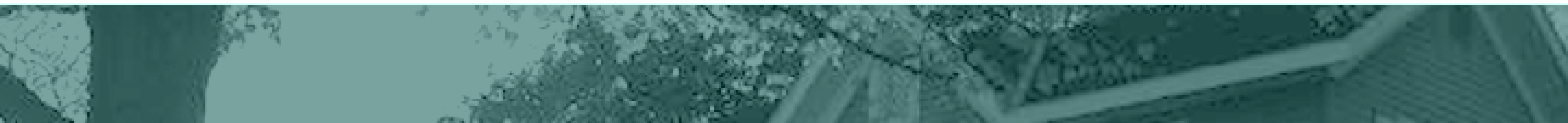
- Subjected to verbal or physical conduct of sexual nature
- Subjected to because of sex
- Conduct unwelcome and
- Sufficiently **severe** and **pervasive**



Hostile Environment

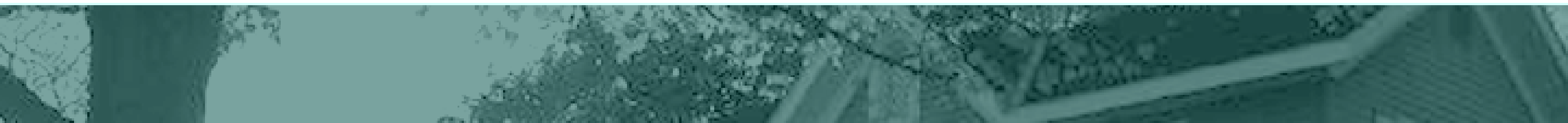
Examples:

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



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.

Sexual Orientation Harassment case:

State ex rel Morehouse and Anderson v. Sherwood Forest Estates, LLC, et al. (Pottawattamie County, CVCV107026)

June 2013

\$72,000 awarded to the couple



HUD examples:

- A gay man is evicted because his landlord believes he will infect other tenants with HIV/AIDS.

Violation: 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 "because children live there."

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:

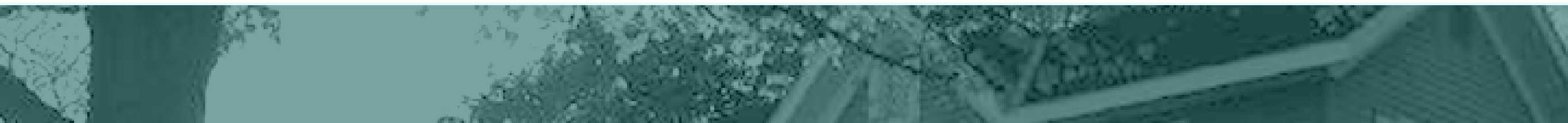
Finally, many state, city, and county laws specifically include sexual orientation and gender identity as protected classes.

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)

Bans sexual orientation housing discrimination

Bans gender identity/expression housing discrimination



FH Best Practices

Non discriminatory ads/publicity/website, etc.

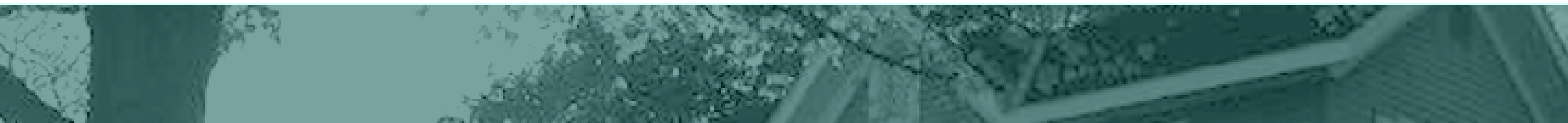
Provide standard, neutral and consistent criteria to all applicants and residents for services, terms or conditions

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....”

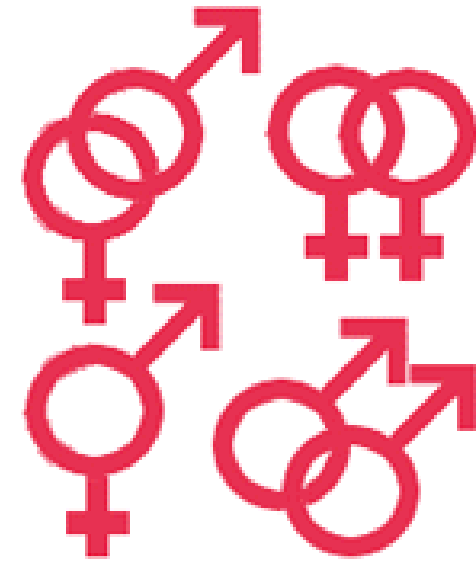
Act promptly in response to a complaint, document.

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



Housing “norms”

- Applications with Mr. or Mrs.
- Check boxes for Male or Female
- Check boxes for Husband or Wife
- Using “sir” or “madam” or “mam”
- Requiring Identification
(which has gender markers on it)
- Doing background checks (revealing a different name)
- Using “she” or “he” pronouns without inquiry to preference
- Requesting household members names, sex and relationship status



Forms and Paperwork are inclusive:

Name: _____

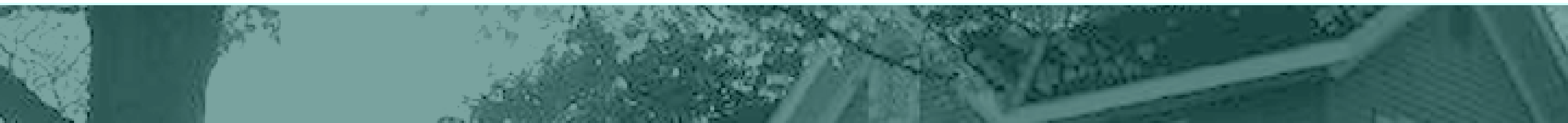
Gender: _____

Spouse/Partner: _____

Marital Status: _____

Parent/Adult Caregiver of: _____

NOTE: A guest's transgender status and/or sexual orientation is confidential, and not shared with another agency without express permission.

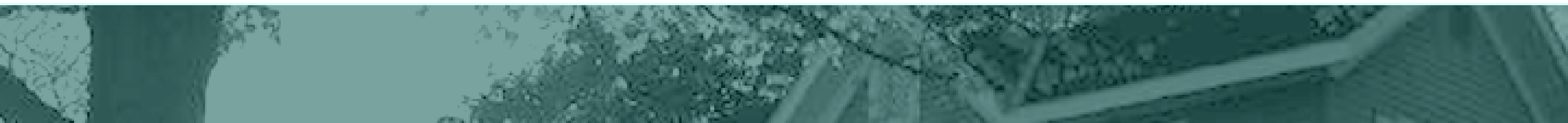


Increased sensitivity:

Ask each participant how they would like to be referred:
“Some people prefer to be called by their first name or Ms. /Mr. , how would you like me to refer to you?”

If you don't know the pronoun, politely ask:
Which pronoun do you use? (she/her/hers, he/him/his, they, etc.)

Use the proper pronoun and preferred name (even when it doesn't match ID docs.)



Increased sensitivity:

Address groups in non-gendered ways: “Good morning everyone,” “Greetings folks,” “People, parents, spouse...”

Design/create facilities so all people have dignity and privacy:

- Bathrooms

- Changing rooms, Showers

- Sleeping



Have Leadership/Staff/Volunteers/Board members who openly identify as LGBTQ

Increased sensitivity:

Know how to intervene if someone is being harassed at the shelter because of their identity as LGBTQ.

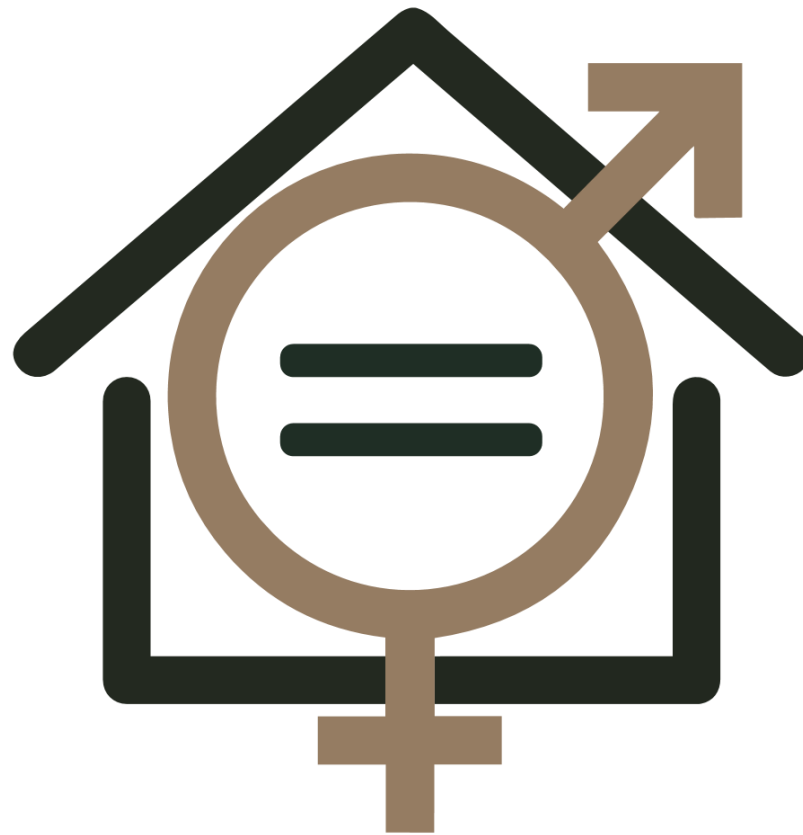
Give affirming LGBT referrals to services

Advocate for LGBTQ inclusion



NWFHA new website:

www.sexdiscriminationinhousing.org



**Thank you for attending &
celebrating the 50th anniversary
of the FH Act.**



www.nwfairhouse.org