

# FAIR HOUSING RIGHTS DUE TO SEXUAL ORIENTATION

## FACT SHEET # 9

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This fact sheet intends to provide background on housing discrimination due to sexual orientation. *Sexual orientation* is commonly defined as a person's homosexuality, heterosexuality, or bisexuality. What follows is a review of current laws and areas of concern and consideration.

### What does Federal Law Protect?

The federal Fair Housing Act provides protection from housing discrimination due to someone's race, color, religion, national origin, gender, disability and/or presence of children. Although sexual orientation is not identified as a protected class under the federal Fair Housing Act, the federal government has issued some recent guidance which provides some limited protection. According to the published Federal Rule by the U.S. Department of Housing & Urban Development (HUD) effective March 5, 2012, in order to ensure equal access for all eligible families to HUD programs "this rule requires that eligibility determinations for HUD-assisted or -insured housing be made without regard to sexual orientation, gender identity, or marital status."<sup>1</sup> The rule has three main parts:

- It prohibits lenders from using sexual orientation as a basis to determine a borrower's eligibility for FHA insured mortgages.
- It clarifies that "families" that are otherwise eligible for HUD programs can't 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 whose financing is insured by HUD from inquiring about the sexual orientation of an applicant or occupant of a dwelling.

The Rule notes that these additional program requirements do not, however, create an additional federally protected class. Thus, discrimination due to sexual orientation is lawful outside of the covered public areas unless covered through applicable state/local laws.

### State Protections & Indiana Localities

According to recent HUD guidance, 20 states and the District of Columbia prohibit discrimination in all types of housing due to sexual orientation. Unfortunately, in Indiana, there is no statewide housing protection due to sexual orientation outside of the limited federal protections. However, there appear to be local ordinances in place in Bloomington, Evansville, Fort Wayne, Indianapolis/Marion County, Lafayette, South Bend and West Lafayette providing protection in both public and private housing from discrimination due to sexual orientation. Please note that local remedies may be limited from those at the federal level. Contact the FHCCI or the city's Human Rights Commission for more information.

### Is Discrimination in Housing a Problem?

To date, there have been few studies to determine levels of housing discrimination due to sexual orientation.

In 2007, a group of fair housing organizations released a report on the results of 120 sexual orientation tests of the rental, sales and lending markets across the state of Michigan. The study found there was evidence of housing discrimination in 33% of rental tests conducted, 25% of sales tests and 20% of mortgage lending tests.

Since significant testing has not been conducted in this area, the report acknowledged in regard to the reported levels that race and gender may have also played a role in the survey results with the testers being overwhelmingly white and female pairs. The report noted needed follow up to clarify other factors which could have impacted the results including "differences in the local housing markets; differences in the types of tests completed (rental, sales, or mortgage); the presence of local ordinances protecting sexual orientation; differences between the ways lesbians and gay men are treated; or other factors such as how well the tester fit into the stereotypical idea of what it means and looks like to be a woman or what it means or looks like to be a man (i.e., did the female tester wear make-up, have long hair, look feminine etc.)"<sup>2</sup>

The Fair Housing Center of Southwest Michigan conducted a similar testing project in 2003-2004. For that project, 30 tests were conducted in Kalamazoo, MI (10 rental, 10 sales and 10 mortgage tests). That testing showed significant differences or evidence of discrimination in 70% of the rental tests, 30% of the real estate sales tests, and 50% of the mortgage lending tests.<sup>2</sup>

Another report utilized survey results regarding the effect of sexual orientation in long term care. It noted the “first glimpse into some of the issues faced by LGBT older adults in long-term care facilities. Of the 769 individuals who completed the survey, 328 people reported 853 instances of mistreatment in such facilities.”<sup>3</sup>

Although more reports are needed to better gauge levels of housing discrimination, these initial studies show that sexual orientation, unfortunately, does have an impact on a person’s housing options and treatment.

### Sexual Orientation Housing Cases

Because of the lack of federal protection across all areas of housing, most cases filed to date have been through state or local laws. Some housing cases of note include:

*Gewalt/Emigh v. Porter*: A long term gay couple moved into property located next to the Porters. After moving in, the couple alleged the Porters waged a “campaign of harassment, intimidation, violence, and threats of violence” against them because of their sexual orientation. Gewalt/Emigh obtained restraining orders against the Porters, but the Porters did not comply with these orders. Britt Porter was arrested several times for breaching the restraining orders, served one thirty-day jail term, and was sentenced to a six month term. Still the discrimination continued and Gewalt/Emigh filed a lawsuit. Settlement reached for \$137,500, payment of the plaintiffs’ attorney’s fees and a civil penalty. (CA)

*Fogel/Daniels v. University Townhouses*: A lesbian couple was denied a two bedroom unit because they were not

related by blood or law while unmarried couples of the opposite sex were considered a family for entry. An undisclosed settlement was reached. (MI)

*Moody/Stowe v. Frey*: A couple was refused the rental of an apartment because they were a male couple. Settlement of \$20,000. (MI)

*Bustin/Bernier v. Caton*: The Maine Human Rights Commission found reasonable grounds to support a discrimination claim against a widow who rescinded a rental agreement after learning that two renters were gay.

### Future Housing Needs for LGBT

Emphasis is also being identified for future housing needs. A 2011 news article noted a growing need for LGBT friendly senior housing. Developers in Philadelphia secured a site and funding for what would be one of the nation’s few LGBT-friendly affordable housing facilities. They hope to break ground on the 52-unit, \$17 million senior housing building in 2013. Although anti-discrimination laws prohibit gay-only housing, projects can be made LGBT-friendly “through marketing and location. And while private retirement facilities targeted at the gay community exist, such residences are often out of reach for all but the wealthiest seniors.”<sup>4</sup> Such consideration for “LGBT friendly” housing should be encouraged by community leaders in all housing types.

### References

<sup>1</sup>*Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule*, U.S. Department of Housing & Urban Development, (FR Doc. 2012-2343), February 2, 2012.

<sup>2</sup>*Sexual Orientation and Housing Discrimination in Michigan*, published by the Fair Housing Centers of Michigan, January, 2007.

<sup>3</sup>*LGBT Older Adults in Long-Term Care Facilities: Stories from the Field*, <http://www.lgbtlongtermcare.org/>

<sup>4</sup>More Gay Friendly Housing Needed, *USA Today*, December 30, 2011.

*The mission of the Fair Housing Center of Central Indiana (FHCCI) is to ensure equal housing opportunities by eliminating housing discrimination through advocacy, enforcement, education and outreach. The FHCCI is located at 615 N. Alabama St., Suite 426, Indianapolis, IN 46204. Phone: 317-644-0673 or 855-270-7280. Relay: 711. Email: info@fhcci.org Web: www.fhcci.org*

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