

## Gender Discrimination

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Together, state and federal fair housing laws prohibit discrimination in housing on the basis of race, color, national origin, gender (or sex), disability, familial status, religion, marital status, age, military status and sexual orientation. In the City of Buffalo, discrimination based upon gender identity and expression is also unlawful.

### What is “gender identity and expression”?

Under the City of Buffalo’s fair housing law, gender identity and expression includes a person’s actual or perceived gender, as well as a person’s gender identity, self-image, appearance, expression, or behavior whether or not that gender identity, self-image, appearance, expression, or behavior is different than traditionally associated with the person’s sex at birth. If you dress or act in a way that is different from the traditional way people born with your gender dress or act, you are protected from discrimination in the City of Buffalo.

### What kinds of protections are there against gender based discrimination in the federal and state law?

Suppose Landlord A says, “I would never rent to young women because their personal products clog up the toilet.” Suppose Landlord B says, “Well, I never rent to young men because they are terrible housekeepers and they don’t take care of the place.” Both of these landlords are refusing to rent to certain people because of their gender and their refusal may be considered unlawful discrimination.

Gender discrimination in housing takes other forms as well. Let’s say a landlord tells a female tenant that she could exchange sex for the rental of her apartment. The landlord serves an eviction notice when the tenant refuses. Courts have held that an offer to exchange sex for the use of an apartment is illegal discrimination based on gender. Other examples of unlawful gender based discrimination might include an apartment manager who launches into a string of X-rated comments each month when he picks up the rent, or a manager who engages one of his workers in a loud conversation about the tenant’s anatomy or sexual habits in the tenant’s presence. Some courts have held that this kind of behavior creates a “hostile living environment” and therefore is also unlawful discrimination.

Suppose a rental agent always has a big smile and hello when he sees a certain prospective tenant walk into his agency. On the prospective tenant’s third visit to check out apartment listings, the rental agent asks her if she would like to go to a movie sometime. The woman explains that she has a boyfriend and turns him down. However, she feels uncomfortable and so switches to another rental agency for her apartment search. This probably would not be found to rise to the level of unlawful gender discrimination. The fact that a person is made to feel uncomfortable about attention that may be sexually based would probably by itself not constitute discrimination based on gender.

Incidents between these extremes present more difficult issues. The courts have indicated that “trivial” incidents are not unlawful, but serious ones are. In cases of “hostile living environments,” the courts look for repeated rather than single or minor incidents. Even the courts disagree on the level of conduct needed to find unlawful discrimination based on gender.

The activity complained of must also be unwanted. A tenant could not, for example, encourage frequent joking with sexual innuendo with her manager, and then claim sexual discrimination when the manager lawfully raises her rent.

## **Who do the laws prohibiting gender based discrimination in housing apply to?**

These laws apply to apartment owners, real estate agents, apartment managers, and other employees such as maintenance personnel, as well as anyone else involved in the sale or rental of housing. There are exceptions. In New York State, some prohibitions do not apply to owner-occupied, two-family homes.

## **What should a victim of sexual harassment related to housing do?**

It is a good idea to call an attorney or an agency such as Housing Opportunities Made Equal (HOME) at 854-1400 to discuss the offensive behavior as soon after it occurs as possible

The victim should also keep notes. These notes should include the date, time, what occurred, who engaged in the offensive behavior, what was said, and whether there were any witnesses. These records will assist the victim in the future should he or she decide to take action. Memories about particular details will often fade. The victim should also keep records showing that there were no problems with the tenancy. Many landlords respond to a sex harassment claim by bringing an eviction action. To prevail, the tenant would have to show that the reason for the eviction is the landlord's discriminatory behavior.

The tenant may want to speak to other sympathetic tenants. The tenant should first consider very carefully whether other tenants have a friendly relationship with the landlord. Sometimes a tenant will find that other tenants have experienced similar situations with the landlord. The victim should also try to arrange to have someone present when dealing with the offender. For example, if a manager makes a routine of picking up the rent on a certain day, the tenant should try to arrange to have someone else there to both witness what happens and to prevent further harassment.

## **When should a victim take action against the landlord?**

In deciding whether to take formal action against a landlord, the victim will need to consider several factors. The victim will need to decide whether to remain in the housing or move. Does the victim feel safe in the housing? The landlord will usually have a key to the apartment. Particularly in the case of owner-occupied housing, the victim may be placed in an extremely uncomfortable situation by taking action against the landlord while still living in the premises. Seeking advice from an attorney or an agency such as HOME may be very helpful in deciding what to do.

## **What action can be taken?**

This also depends on the particular circumstances involved. If unwanted sexual touching is involved, the victim may call the police. It may be particularly helpful to discuss the matter with an attorney, HOME, or similar agency first. Sometimes a letter to the landlord will correct the situation. The letter could be written by the victim, a legal services office, or by an agency such as HOME.

Whether or not the landlord is first contacted to correct the situation, the victim may file a formal complaint against the landlord. Complaints may be filed with the United States Department of Housing and Urban Development or the New York State Division of Human Rights. Each of these government agencies will investigate the victim's claims. If the agency determines that reasonable cause exists to believe that discrimination has occurred, the matter will go to a hearing. A victim does not need an attorney to file with these agencies.

Alternatively, the victim could choose to file a complaint directly in state or federal court. Generally an attorney is needed to do this. The complaint will then be heard by a judge or jury.

It is very important to take action quickly. In some cases, the complaint must be filed within one (1) year of the date the discrimination occurred.

## **WHO TO CONTACT IF YOU ARE A VICTIM OF SEX DISCRIMINATION IN HOUSING**

NEIGHBORHOOD LEGAL SERVICES  
716-847-0650

HOUSING OPPORTUNITIES MADE EQUAL (HOME) 716-854-1400

US DEPT. OF HOUSING AND URBAN DEVELOPMENT  
1-800-424-8590

NEW YORK STATE DIVISION OF HUMAN RIGHTS  
716-847-7632

BUFFALO FAIR HOUSING OFFICE  
716-851-4212

ERIE COUNTY BAR ASSOCIATION LAWYER REFERRAL  
716-852-3100