

Gender Discrimination

Together, local, 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, sexual orientation, and source of income. Both the City of Buffalo and the County of Erie have laws that prohibit discrimination based upon gender identify.

What is “gender identity and expression”?

Under the County of Erie’s fair housing law, gender identity 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 that which is 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.

What kinds of protections are there against gender based discrimination in the federal, state and local 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 people because of gender and the landlord’s refusal to rent may be considered unlawful discrimination.

Under the Erie County law that protects against discrimination based upon gender identify and expression, tenants have additional rights. A landlord who evicts a male tenant because that person is seen going out in a party dress may be acting in violation of this law.

Gender discrimination in housing takes other forms as well. One example would be where a landlord tells a tenant that he could exchange sexual acts for the rent. 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 about a tenant each month when he picks up the rent, or a manager who engages one of his workers in a conversation about the tenant’s anatomy or sexual habits in the tenant’s presence. Courts have held that this kind of behavior creates a “hostile living environment” and 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.

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. The protections of the Buffalo City Ordinance do not apply to owner-occupied dwellings of three (3) or fewer apartments. Under the Erie County Ordinance, the protections offered do not apply to two (2) units in which one is owner-occupied.

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 Neighborhood Legal Services (NLS) or Housing Opportunities Made Equal (HOME) to discuss the offensive behavior as soon after it occurs as possible.

The victim should also keep notes. These notes should include the date and time of the incidents in question, 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 sexual 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 had similar problems with the landlord. The victim should 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 both to 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 make several decisions. The victim will need to decide whether to remain in the housing or to move. Seeking advice from an attorney or an agency such as NLS or 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 from NLS or HOME.

The victim may file a formal complaint against the landlord. Depending upon the nature of the discrimination, complaints may be filed with the United States Department of Housing and Urban Development or the New York State Division of Human Rights. Complaints involving source of income discrimination may be filed with the New York State Division of Human Rights or in the County Court in which the incident occurred. The case should be filed with the municipality where the incident occurred. Complaints involving gender identity and expression-based discrimination must be filed with the Erie County or with the City of Buffalo's Fair Housing Office. 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

To determine who the Fair Housing Officer in your city, town, or village is please visit:

<http://www2.erie.gov/environment/index.php?q=local-fair-housing-officers#node-318>