Live Online Event

Making Senior Housing Policy LGBT-Friendly
Cheryl Gladstone
Enterprise Community Partners

Cheryl Gladstone, Senior Program Director, leads Enterprise Community Partners’ national strategy around older adults, and shapes the organization’s work to better coordinate between healthcare and affordable housing. She directs local and national coalitions of housing providers, healthcare providers, insurers, and local stakeholders who seek to improve resident health through affordable housing.
Our Panelists

Aaron Tax
Services & Advocacy for GLBT Elders (SAGE)

Aaron Tax is the Director of Federal Government Relations for Services & Advocacy for GLBT Elders (SAGE), where he advocates for LGBT-inclusive federal aging policies that account for the unique needs of LGBT older adults.
Kate Scott
Equal Rights Center

Kate Scott is Director of Fair Housing at the Equal Rights Center (ERC), a national non-profit civil rights organization headquartered in Washington, DC. The ERC was founded 30 years ago and is dedicated to promoting equal opportunity in housing, employment, and access to public accommodations and government services.
Karen Loewy
Lambda Legal

Karen L. Loewy is a Senior Attorney for Lambda Legal, the oldest and largest national legal organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV. Ms. Loewy is involved in all aspects of Lambda Legal’s impact litigation, policy advocacy and public education, with particular emphasis on issues affecting LGBT and HIV-positive seniors.
Aaron Tax

Director of Federal Government Relations
SAGE (Services and Advocacy for GLBT Elders)
LGBT Elders Face Unique Challenges to Successful Aging

1. Cumulative effects of a lifetime of stigma
2. Need to rely upon “families of choice” for care and support
3. Unequal treatment under laws and programs for older adults
A 70-year old lesbian has seen her expressions of love labeled:
- A psychiatric disorder (until 1973)
- Criminal (until 2003)
- Anti-family and immoral (still by many religious groups)
- A threat to security and morale (until 2011)

LGBT Elders Face Unique Challenges to Successful Aging

1. Effects of stigma, past and present
2. Need to rely upon “families of choice” for care and support
3. Unequal treatment under laws, programs and services for older adults
Stigma’s Cumulative Effects

- Largely closeted
- Disrupted lives
- Severed connections to families of origin
- Fewer, less secure opportunities to make a living and save for retirement
- Fear of accessing health and community services
LGBT Elders Face Unique Challenges to Successful Aging

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- LGBT elders 2X more likely to be single, 4X less likely to have children
- Families and social networks are critical to successful aging
  - In US, family members provide 80% of long-term care
  - Social isolation linked to higher morbidity, infection, depression and cognitive decline
- Hostility (and closet) create distance from parents, siblings, relatives
- Rely on friends and partners
LGBT Elders Face Unique Challenges to Successful Aging

1. Effects of stigma, past and present

2. Need to rely upon “families of choice” for care and support

3. Unequal treatment under laws, programs and services for older adults
   - Design safety nets around marriage, then exclude same-sex couples
   - Fail to recognize families of choice
   - Fail to address stigma and discrimination
The Three Challenges Obstruct LGBT Elders’ Successful Aging

Financial Security
Good Health/Health Care
Social/Community Support

LGBT Barriers
Stigma
Need to rely on “families of choice”
Unequal treatment under laws & programs

SUCCESSFUL AGING
The Problem

• Economic Insecurity
• Housing Discrimination
• Lack of Legal Protections
• Racial & Gender Disparities
Imagine a New Reality

- BUILDING HOUSING
- TRAINING PROVIDERS
- CHANGING POLICY
- EDUCATING CONSUMERS
- EXPANDING SERVICES
POLICY BRIEF

WELCOME HOME: IMPROVING HOUSING SECURITY FOR LGBT OLDER ADULTS
Policy Goals

1. EXPAND LEGAL PROTECTIONS
2. ENFORCE EXISTING PROTECTIONS
3. IMPROVE DATA COLLECTION AND DEEPEN RESEARCH
4. PROMOTE CULTURAL COMPETENCE
5. ENCOURAGE FUNDING/DEVELOPMENT OF LGBT-FRIENDLY SENIOR HOUSING
6. ENHANCE SUPPORTIVE HOUSING FOR LOW-INCOME AND FRAIL LGBT OLDER PEOPLE
Making Senior Housing Policy
LGBT Friendly

January 28, 2016

Karen L. Loewy
Senior Attorney and
Seniors Program Strategist
Rights of LGBT Seniors

LGBT older adults and older adults living with HIV have rights:

- to be free from discrimination in public and private housing, including in housing assistance programs like Section 8 and seniors' housing programs
- to be free from discrimination, isolation, harassment, abuse and neglect in long-term care, rehabilitation, and assisted-living facilities, and to have their privacy, relationships, gender identities and choices equally respected
- to be free from discrimination in accessing health care and to be treated with dignity and respect by health care and social service professionals
Discrimination Prohibitions

Sources of law addressing discrimination:

• Federal, state, county, municipal
• Some govern public actors, some private
• Some tied to whether you receive money from the government
• Different ways to enforce- complaints with agencies, lawsuits, involving police
Housing Anti-Discrimination Laws

Housing anti-discrimination laws may apply to: public housing, private housing (with few exceptions for small or owner-occupied dwellings), senior housing communities, skilled nursing facilities, assisted living facilities, shelters, and similar facilities.
The Federal Fair Housing Act

The Fair Housing Act prohibits discrimination in most private and public housing on the basis of race, color, national origin, religion, sex, familial status or handicap.

The FHA makes it illegal to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of these protected characteristics.
The Fair Housing Act’s sex discrimination prohibitions apply to LGBT people.

- Sex discrimination includes sexual harassment and discrimination rooted in gender stereotypes.
- July 2010: U.S. Department of Housing and Urban Development (HUD) announced guidelines explaining that gender identity discrimination may qualify as sex discrimination under the Fair Housing Act.
Smith v. Avanti

- Case now pending in the U.S. District Court in Colorado
- Challenges property owner’s refusal to rent a home to a same-sex couple, one of whom is transgender, and their children under the Fair Housing Act (sex and familial status) and Colorado’s Anti-Discrimination Act (sex, sexual orientation, gender identity)
Sex Discrimination and LGBT People

• Federal agencies and courts are increasingly recognizing discrimination against LGBT people as sex discrimination, whether per se or under sex-stereotyping theories.

• The U.S. Equal Employment Opportunities Commission has addressed the protections for LGBT workers here: http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm

• A collection of relevant court cases can be found here: http://www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm
HUD’s Equal Access Rule

In 2012, HUD enacted a rule that prohibits discrimination based on sexual orientation, gender identity and marital status in federally-funded housing and federally-insured mortgage programs. The rule also:

• Defines the terms “family” and “household,” as used in HUD programs, include persons regardless of actual or perceived sexual orientation, gender identity, or marital status; and

• Prohibits owners and operators of HUD-funded housing, housing insured by FHA, and FHA lenders from asking about an applicant’s or occupant’s sexual orientation or gender identity to determine eligibility or adequacy of a potential borrower’s income

HUD has issued guidance regarding the Equal Access Rule’s applicability to Multifamily insured and assisted housing, including Section 202 Supportive Housing for the Elderly:
Discrimination in Senior Housing

For seniors living in senior housing communities, discrimination includes facilities’ failure to address harassment by other residents.

Jim and Bob faced harassment in their Arizona retirement community’s pool, where Jim was helping Bob with physical therapy. Facility staff refused to intervene, and when Jim and Bob filed a complaint, the board failed to follow community procedures for investigating. Instead, they placed a written reprimand in Jim and Bob’s file for alleged foul language in violation of the community code of conduct.

Margo has faced months of harassment and two incidents of assault by other residents in her independent living facility. After the first assault, which was witnessed by facility staff, the staff did nothing to assist her or reprimand the other resident. Rather, the staff has isolated Margo further, and seems to be trying to drive her out.
Other Housing Protections

For housing establishments that also provide medical care (i.e., assisted living facilities, long term care settings), other federal, state, and local laws may apply, including:

- **Section 1557 of the Affordable Care Act** (ACA), which prohibits discrimination in any health program or activity, any part of which is receiving federal financial assistance, or under any program or activity established by the ACA on the basis of race, sex (including gender identity and non-conformity with sex stereotypes), disability, or age.

- **The Federal Nursing Home Reform Act** (FNHRA) -- A comprehensive federal statute that creates a minimum set of standards of care and rights for people living in Medicare or Medicaid certified nursing facilities. FNHRA does not limit its protections to a specific class of individuals. Most states have similar residents’ rights laws. For information on its specific application to LGBT residents, see http://www.lambdalegal.org/publications/fs_nursing-home-residents-rights
State Anti-Discrimination Laws

- 22 states + DC have laws prohibiting housing discrimination because of sexual orientation
- 19 states + DC have laws prohibiting housing discrimination because of gender identity

Source: http://www.lgbtmap.org/equality-maps/non_discrimination_laws
Enforcing General Housing Laws

Weinstein and Calvani v. Weinreb Management
Lambda Legal Help Desk

If you or someone you know has a legal question — contact the Lambda Legal Help Desk:

http://www.lambdalegal.org/help

National Headquarters: (212) 809-8585
Western Office: (213) 382-7600
Midwest Office: (312) 663-4413
Southern Office: (404) 897-1880
South Central Office: (214) 219-8585
Toll Free: (866) 542-8336
Fair Housing & Older LGBT Adults

Kate Scott
Director of Fair Housing
Equal Rights Center
In this presentation

• About the Equal Rights Center
• Fair Housing Protections- General Overview
• What Does Discrimination Against Older Same Sex Couples Look Like?
  • 2014 Report- Opening Doors: An Investigation of Barriers to Senior Housing for Same Sex Couples

About the Equal Rights Center

- Originally formed in 1983, the Equal Rights Center is a national non-profit civil rights organization dedicated to promoting equal opportunity in housing, employment and access to public accommodations and government services.
About the Equal Rights Center

• The ERC conducts hundreds of civil rights tests each year to educate the public and government officials about the discrimination still faced by many individuals across America.
Fair Housing Protections

- Fair Housing Act
- State and local protections
- U.S. Dept of Housing and Urban Development (HUD) Equal Access Rule
Fair Housing Act: Protected Classes

- Race
- Color
- Religion
- National Origin
- Sex
- Familial Status
- Disability
Fair Housing Act: Protected Classes

- “Housing for Older Persons” Exemption*:
  - The Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Exempt senior housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children.
- The exemption does not apply to other discrimination on the basis of other protected classes.

Fair Housing Act: Protected Classes

• Disability:
  – The Act defines a person with a disability to include:
    • Individuals with a physical or mental impairment that substantially limits one or more major life activities;
    • Individuals who are regarded as having such an impairment; and
    • Individuals with a record of such an impairment.
• Individuals with disabilities may request a:
  
  – *Reasonable accommodation*
  
  – *Reasonable modification*

  ...in order to afford such individuals equal opportunity to use and enjoy a dwelling.
The Fair Housing Act covers a wide variety of housing related transactions:

- Rental
- Sales
- Lending
- Insurance
- Zoning
- ...and more!
• “Mystery shopping” for housing

• Matched pairs of testers express interest in a housing unit communicating information contained in a profile

• Report back on experiences
Opening Doors
Investigation

Opening Doors:
An Investigation of Barriers to Senior Housing for Same-Sex Couples

The Equal Rights Center 2014
Housing discrimination can exacerbate the hardships that many older LGBT individuals face.
Results

• In 96 of the 200 tests conducted (48%), the LGB tester with a same-sex spouse experienced at least one type of adverse, differential treatment when compared to the heterosexual tester with an opposite-sex spouse.
• Differences in availability and steering:
  – In 20 of the 200 tests, housing providers offered fewer units to LGB testers.
  – Only providing information about two bedroom units to LGB tester, even though the tester asked about one bedroom units.
Discrimination looks like...

• Differences in rental price:
  – In 20 of the 200 tests, the LGB tester was quoted a rent price at least $100 more than was quoted to the heterosexual tester.
Discrimination looks like...

- Differences in fees and deposits:
  - In 42 of the 200 tests, the LGB tester was subjected to additional and/or higher fees and deposits.
Discrimination looks like...

- Differences in amenities and specials:
  - In 9 of the 200 tests, the LGB tester received significantly less information regarding the amenities available at the facility despite speaking with the same agent.
  - In 11 of the 200 tests, the heterosexual tester was offered a special or incentive to rent, such as rent reduction or waiving of fees, that was not provided to the LGB tester.
• Differences in the application process:
  – In 22 of the 200 tests, the LGB tester was told of additional application requirements, such as background checks, credit checks, proof of income, or a waitlist process, while the heterosexual tester was provided with a more streamlined process.
Questions?

• Download the Opening Doors report on ERC’s website:
  http://www.equalrightscenter.org

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