

# Opening Doors:

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





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. With members located in all 50 states, the District of Columbia and Puerto Rico, the ERC works to identify, address and remedy both individual instances of discrimination, as well as large-scale, systematic discrimination nationwide.

At the core of ERC's success in promoting civil rights is its three decades of experience in civil rights testing. Through a variety of innovative testing techniques, the ERC is a national leader in identifying and documenting differences in the quality, quantity, and content of information and services provided to individuals based on individual factors and characteristics. Through this testing process, the nature and extent of illegal discrimination can be ascertained. 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.

## Acknowledgments

Services and Advocacy for GLBT Elders (SAGE) has been a critical partner throughout the conceptualization, development, and execution of this testing investigation, as well as providing key input for this report. SAGE is the country's largest and oldest organization dedicated to improving the lives of lesbian, gay, bisexual and transgender (LGBT) older adults. SAGE offers supportive services and consumer resources for LGBT older adults and their caregivers, advocates for public policy changes that address the needs of LGBT older people, and provides training for aging providers and LGBT organizations, largely through its National Resource Center on LGBT Aging. To learn more about SAGE, visit <http://www.sageusa.org>.

The ERC also thanks the Gill Foundation, and the Retirement Research Foundation for their financial support to help make this work possible.

Finally, thanks are due to the ERC members and testers who participated in this project, without whose insights, dedication, and perseverance, the testing and this report could not have occurred.



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# Executive Summary

In recent years, the lesbian, gay, bisexual and transgender (LGBT) community has made significant progress in advancing civil rights. Despite this progress, however, LGBT individuals continue to be denied equal opportunity in housing. This may be particularly true for older LGBT adults. When surveyed, LGBT seniors regularly list housing discrimination as one of their primary concerns,<sup>1</sup> including “trepidation” about mainstream senior housing options.<sup>2</sup>

Disparities in income, and fewer familial resources for older LGBT adults, coupled with the increased demand for senior housing generally, create an environment ripe for housing discrimination against LGBT seniors across the country. Making matters worse, federal law does not expressly prohibit discrimination based on sexual orientation or gender identity,<sup>3</sup> although some state and local jurisdictions do provide a patchwork of protections.

A person’s ability to obtain adequate and safe housing of his or her choice affects all aspects of daily life, including employment and educational opportunities, proximity to friends and family, and access to commercial, government, and social services. This relationship between housing and other aspects of everyday life is particularly important for older individuals, who may be more limited in their mobility, rely on a fixed retirement income, or require additional support from loved ones and service providers.

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1 See, e.g., City & County of San Francisco, Human Rights Commission and Aging and Adult Services Commission, *Aging in the Lesbian Gay Bisexual and Transgender Community* (2003), available on-line at <http://www.sf-hrc.org/ftp/uploadedfiles/sfhumanrights/docs/finalreport.pdf>.

2 Nancy J. Knauer, *LGBT Elder Law: Toward Equity in Aging*, 32 *Harvard L.J.* 301, 308 (2009), available on-line at: [http://works.bepress.com/nancy\\_knauer/3](http://works.bepress.com/nancy_knauer/3); Nat’l Gay & Lesbian Task Force, *Make Room for All: Diversity, Cultural Competency & Discrimination in an Aging America* 316 (May 18, 2006).

3 A recent rule promulgated by the U.S. Department of Housing and Urban Development (HUD) provides some protection for individuals in HUD-assisted housing, under this rationale. See U.S. Dep’t of Housing & Urban Dev., *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity*, 77 Fed. Reg. 5662 (Feb. 3, 2012).



This matched-pair testing investigation was the first of its kind to focus on providing objective, quantitative data specific to older same-sex couples seeking senior housing. In this investigation, the ERC conducted 200 tests across 10 states to measure the extent of adverse, differential treatment against a senior seeking housing for oneself and a same-sex partner. 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.

The adverse differential treatment observed ranged from differences in availability, pricing, fees and costs, incentives to rent, amenities available, and application requirements. While discrimination against same-sex couples is not universally prohibited, these types of adverse treatment are all standard forms of discriminatory activity.

Based on these findings, the ERC makes the following recommendations:

1. **Legislation Prohibiting Housing Discrimination Based On Sexual Orientation and Gender Identity is Essential.**
2. **Existing Legal Protections Must be Enforceable When Housing Discrimination Does Occur.**
3. **Senior Housing Providers Must Adopt Anti-Discrimination Policies and Practices, and Be Sensitive to the Unique Needs of LGBT Seniors.**
4. **LGBT Seniors Should Know Their Housing Rights and the Resources Available.**
5. **Further Research Must Be Conducted to Provide Additional Data on Housing Discrimination Against other Older LGBT Adults.**

## Gender Identity and Housing Discrimination Against Older Individuals

This report is limited to discrimination against older cisgender<sup>4</sup> lesbian, gay, and bisexual people as identified by being in a same-sex relationship. However, it is important to note that discrimination against older transgender people, regardless of their sexual orientation, is also a widespread and serious problem.<sup>5</sup> A testing investigation requires isolating one identifiable variable, in order to ensure accurate data about what characteristic was the basis for any differential treatment encountered. Further research is urgently needed to determine the rate of housing discrimination against older people based on gender identity, in order to address the related but distinct barriers faced by all members of the LGBT community. To clearly identify the limitations of the study, this report uses lesbian, gay, and bisexual (LGB) for discussions regarding the testing and other research specific to sexual orientation discrimination, while including transgender individuals (LGBT) when discussing research that includes gender identity discrimination and/or recommendations that impact the broader LGBT community.

4 Cisgender is a term used to describe someone whose gender identity matches the gender they were assigned at birth, *i.e.*, someone who is not transgender. See Basic Rights Oregon, *Trans101: Cisgender* (Oct. 29. 2001), available on-line at <http://www.basicrights.org/uncategorized/trans-101-cisgender/>.

5 Jaime M. Grant, Lisa A. Mottet, & Justin Tanis, *Injustice At Every Turn: A Report Of The National Transgender Discrimination Survey* 106 (2011) (in a nationwide survey of transgender individuals, 19% of survey respondents reporting being denied a home or apartment, 11% reporting being evicted because they were transgender or gender non-conforming, 19% reporting they became homeless at some point because they were transgender or gender non-conforming, and 1.7% of respondents were currently homeless).



## Background

In any given year, an estimated 4 million fair housing violations occur.<sup>6</sup> The full extent to which individuals experience housing discrimination based on their sexual orientation is unknown, but anecdotal information and the limited quantitative data available confirm that lesbian, gay, and bisexual (LGB) individuals experience inferior treatment when attempting to access housing.<sup>7</sup> A research study commissioned by the U.S. Department of Housing and Urban Development (HUD) found that, when emailing the same housing provider to inquire about housing availability, opposite-sex couples were more likely to receive a response than same-sex couples.<sup>8</sup> A 2007 testing investigation conducted in Michigan found that individuals posing as gay or lesbian home seekers were subject to unfavorable treatment in 32 out of 120 (27%) tests conducted.<sup>9</sup>

Even this limited data has not examined how sexual orientation discrimination specifically impacts seniors. Older adults represent a substantial and increasingly visible segment of the population,

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6 National Fair Housing Alliance, *Fair Housing in a Changing National: 2012 Fair Housing Trends Report* (2013), available at <http://www.nationalfairhousing.org/LinkClick.aspx?fileticket=GBv0ZVJp6Gg%3D&tabid=3917&mid=5321>.

7 Kaiser Family Foundation, *Inside-Out: A Report on the Experiences of Lesbians, Gays, and Bisexuals in America and the Public's View on Issues and Politics Related to Sexual Orientation* (2001), available at <http://www.kff.org> (11% of gay and lesbian respondents reporting personally experiences with housing discrimination, and 35% reported knowing someone who had experienced housing discrimination based on sexual orientation); Gregory M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates From a National Probability Sample*, 24 *J. of Interpersonal Violence* 54–74. (2009) (6.5% gay men; 5.1% lesbians, 2% bisexual men, 1.3% bisexual women reporting experiencing housing discrimination).

8 M. Davis and Company, Inc., et al., *An Estimate of Housing Discrimination Against Same Sex Couples* (U.S. Department of Housing and Urban Development 2013), available at: [http://www.huduser.org/portal/Publications/pdf/Hsg\\_Disc\\_against\\_SameSexCpls\\_v3.pdf](http://www.huduser.org/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf).

9 Michigan Fair Housing Centers, *Sexual Orientation and Housing Discrimination in Michigan: A Report of Michigan's Fair Housing Centers* (January 2007), available at [www.fhcmichigan.org](http://www.fhcmichigan.org).





particularly as the Baby Boomer generation enters retirement and the U.S. population overall ages. There are an estimated 3 million LGBT seniors aged 65 or older today, and that number is projected to double by 2030,<sup>10</sup> meaning there will be an estimated six million LGBT seniors.

As the U.S. population – including the LGBT community – ages, access to senior housing, such as retirement communities and assisted living facilities, becomes increasingly critical. LGBT people may face unique hurdles accessing housing designed for their needs, including finding housing that is welcoming to same-sex couples. Historically, LGBT seniors have been invisible to both the larger senior community and the broader LGBT community. To avoid hostility and stigma, many LGBT seniors hide their sexual orientation or gender identity from others, or disclose their sexual orientation or gender identity only to a few trusted individuals – often remaining “in the closet.” Other LGBT seniors choose not to hide their sexual orientation, while many others simply cannot pass as heterosexual or cisgender. These people are particularly vulnerable to discrimination. Until recently, LGBT activism has not prioritized pressing issues for LGBT seniors, with many LGBT seniors feeling disconnected from or unwelcomed by the “younger” LGBT community.<sup>11</sup>

Nationwide, only a handful of residential communities cater to the specific needs of older members of the LGBT community. Plans for market-rate housing for LGBT older adults have been challenged by a slowed economy, weakening housing market, and ineffective business models.<sup>12</sup> Moreover, many LGBT seniors may prefer not to live in a predominantly LGBT community, without having to sacrifice living openly as an LGBT person. As the number of older adults increases, as well as the number of LGBT seniors living openly, many with their spouse or partners, the need for more housing options that allow older LGBT people to live in a safe and comfortable environment becomes increasingly important.

## Discrimination Against Same-Sex Couples

Seniors in same-sex relationships are generally not afforded the same acceptance, benefits, protections and services as seniors in opposite-sex relationships – and the lack of a level playing field has real and lasting effects on financial security, particularly in their retirement years. For example, having not been afforded the right to marry (either historically or currently, depending on jurisdiction), same-sex couples are not equally eligible for spousal benefits. Inheritance rules, estate taxes and veterans benefits are other areas where same-sex couples are either at a comparative disadvantage, or do not have benefits available to them at all.<sup>13</sup> Moreover, 90% of LGBT seniors report having no children, compared to 20% of their cisgender heterosexual counterparts,<sup>14</sup> limiting their

10 Knauer, *supra* note 2; Nat'l Gay & Lesbian Task Force, *supra* note 2.

11 Services & Advocacy for Gay, Lesbian & Transgender Elders (SAGE), *Improving the Lives of LGBT Older Adults* (2010), available online at <http://www.sageusa.org/files/Improving%20the%20Lives%20of%20LGBT%20Older%20Adults%20-%20full%20report.pdf>. One study found that 44% of older gay men felt ignored because of their age while 42% said the LGBT movement does not do enough to engage older LGBT people in social activities. *Id.* (citing Andrew Hostler, *Old, Gay and Alone?* in GAY AND LESBIAN AGING RESEARCH AND FUTURE DIRECTIONS (2004)).

12 See Dan Frosch, *Hard Times for Gay Retirement Havens*, N.Y. TIMES, Oct. 28, 2011.

13 Services & Advocacy for GLBT Elders (SAGE), *LGBT Older Adults: Facts at a Glance*, September 2010 available at [www.sageusa.org](http://www.sageusa.org).

14 Knauer, *supra* note 2, at 310; Sean Cahill, Ken South & Jane Spade, Policy Inst. of the Nat'l Gay & Lesbian Task Force Found., *Outing Age: Public Policy Issues Affecting Gay, Lesbian, Bisexual, and Transgender Elders* (2000), available on-line at <http://www.thetaskforce.org/downloads/reports/reports/OutingAge.pdf>.

familial support network. SAGE, the country's leading organization dedicated to improving the lives of LGBT older adults, identified three circumstances that create unique barriers to successful aging for LGBT people:

- The effects of social stigma and prejudice, past and present;
- Thin support networks, or reliance on informal “families of choice” for social connections, care and support – at a time when government and other institutions largely define family based on marriage and biological kin; and
- Inequitable laws, programs, and services that fail to address, or create extra barriers to, social acceptance, financial security, and better health and well-being for LGBT seniors.<sup>15</sup>

The possibility of encountering housing discrimination adds to these hardships. Same-sex couples may be denied housing in a particular community based on their sexual orientation, and in a worst case scenario, forced to separate from their partners in order to obtain appropriate housing or receive care. To protect themselves, LGBT seniors may feel the need to re-enter “the closet” and hide their sexual orientation or gender identity from those around them, including caregivers.<sup>16</sup> As one researcher noted:

*As GLBT old people enter assisted living situations, nursing homes, independent elderly housing or retirement communities, they are often presumed heterosexual and may feel the need to go back into the closet; often their long-term relationships are devalued and not recognized. Even if they have lived openly in the past, they may suddenly find themselves in situations where disclosing their sexual orientation or gender variance makes them vulnerable to discrimination or even abuse. The lack of sensitivity to sexual orientation in housing and supportive care programs for elders often places GLBT elders in vulnerable and uncomfortable circumstances.<sup>17</sup>*

To compound matters, this type of discrimination creates undue financial hardship in the lives of LGBT seniors at the very time when financial resources are often becoming more limited.

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15 SAGE, *supra* note 13, at 4.

16 *Id.*

17 Cahill, South & Spade, *supra* note 14 at 53.



## Housing Discrimination and the Limited Legal Protections for Senior Same-Sex Couples

Housing discrimination is distressingly common, but woefully underreported. In 2011, for example, among the 4 million fair housing violations estimated to have occurred,<sup>18</sup> only slightly more than 27,000 housing discrimination complaints were actually filed with government agencies.<sup>19</sup>

Currently, federal law does not expressly prohibit housing discrimination based on sexual orientation or gender identity in the private housing market. In 2012, HUD promulgated a rule prohibiting discrimination based on sexual orientation or gender identity in any HUD-assisted housing.<sup>20</sup> While helpful, particularly for low income same-sex couples, such housing is not universally available and, even when available, often has a lengthy waiting list that makes it impractical for addressing immediate housing needs. The Fair Housing Act prohibits discrimination based on race, color, religion, national origin, sex, disability and familial status (the presence of children under the age of 18).<sup>21</sup> In the employment context, the U.S. Equal Employment Opportunity Commission (EEOC) has found some instances of discrimination based on sexual orientation to be sex discrimination in violation of federal law,<sup>22</sup> but this reasoning has not been adopted in housing complaints.

At the time of this writing, 21 states, the District of Columbia, and a growing number of cities and counties prohibit housing discrimination based on sexual orientation and/or gender identity.<sup>23</sup> Where protections do exist, there is often a lack of organizations and resources to monitor compliance, as well as little to no governmental enforcement. Lack of legal protections, or the ineffective monitoring and enforcement of existing laws, may leave LGBT individuals reluctant to lodge complaints. Many people, particularly LGBT seniors, may also be unaware of their rights and the avenues for available relief.

Today, housing discrimination rarely occurs as a blatant refusal or rejection by a housing provider. Instead, barriers to equal housing opportunity are erected when housing providers give different and adverse information regarding availability, cost, amenities and services, terms and conditions for housing, the application process, and follow up. With respect to same-sex couples, sometimes

18 National Fair Housing Alliance, *supra* note 6.

19 *Id.* at 6.

20 See U.S. Dep't of Housing & Urban Dev., Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662 (Feb. 3, 2012).

21 42 U.S.C §§ 3601, *et seq.*

22 See, e.g., *Veretto v. U.S. Postal Service*, EEOC Appeal No. 0120110873, 2011 WL 2663401 (E.E.O.C.) (July 1, 2011) (discrimination based on sex-stereotype that men should only marry women can constitute discrimination based on sex); *Castello v. U.S. Postal Service*, EEOC Request No. 0520110649 (December 20, 2011); 2011 WL 6960810 (E.E.O.C.) (discrimination based on sex-stereotype that women should only have sexual relationships with men can constitute discrimination based on sex); *Culp v. Dep't of Homeland Security*, EEOC Appeal No. 0720130012, 2013 WL 2146756 (E.E.O.C.) (May 7, 2013) (allegation of sexual orientation discrimination was a claim of sex discrimination because supervisor was motivated by his attitudes about sex stereotypes that women should only have relationships with men).

23 See National Gay & Lesbian Task Force, *State Nondiscrimination Laws in the U.S.* (updated June 23, 2013), [http://www.thetaskforce.org/downloads/reports/issue\\_maps/non\\_discrimination\\_6\\_13\\_color.pdf](http://www.thetaskforce.org/downloads/reports/issue_maps/non_discrimination_6_13_color.pdf).

housing providers refuse to recognize them as couples, encouraging gay and lesbian partners to apply separately or restricting them from living together. In more blatant cases, housing providers may make degrading or insulting remarks, or otherwise be less inviting, or even more hostile, to prospective LGB residents. Where protections against discrimination based on sexual orientation exist, these differences in treatment amount to illegal discrimination.

Discriminatory practices at senior housing facilities impose an emotional toll on senior same-sex couples, and create additional monetary hardships at a time when financial resources are often limited. Discrimination against senior same-sex couples often leads to higher application costs, increased rental rates, and duplicative fees for couples required to apply separately as individuals. This results in unforeseen, and at times insurmountable, financial burdens that eliminate a significant number of housing options. Older individuals, who grew up in an era that openly condemned same-sex relationships, are particularly at risk for re-victimization as they access senior housing, because of prior ridicule, violence, or other abuse experienced because of their identity.

Housing discrimination does not just harm the targeted individual or couple, but hurts all of society. Residents of senior housing facilities are denied the opportunity to live and learn in a diverse community; relatives and loved ones are more limited in the options available when assisted care is needed for their aging relatives; and non-seniors observe the stigma that may confront them in their retirement planning, dimming their prospects for a healthy, productive, optimistic retirement.





# Methodology

## Pilot Testing

Prior to conducting the 10-state investigation underlying this report, the ERC conducted pilot testing in the District of Columbia, Maryland, and Virginia. These three mid-Atlantic jurisdictions represent the full range of protections (and lack thereof) against discrimination based on sexual orientation,<sup>24</sup> providing a ripe environment for conducting matched-pair testing.

In the pilot study, a “proxy” methodology was used. Testers posed as a family member seeking housing for an older relative and either their same-sex or opposite-sex spouse. The tests in the pilot study documented adverse, disparate treatment 60% of the time when the tester sought housing for a same-sex couple.

Based on the analysis of the test results gathered in the pilot study, the ERC determined that there was a sufficient level of differential adverse treatment present in the findings to pursue the project on a larger scale. In addition to offering a preliminary assessment of the problem, the pilot study allowed for the ERC to refine the methodology prior to a national study.

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<sup>24</sup> The District of Columbia has a longstanding prohibition on discrimination based on sexual orientation, D.C. Human Rights Act § 2-1402.21 (1977), and was one of the first jurisdictions to recognize same-sex marriages, D.C. Jury and Marriage Amendment Act of 2009. In Maryland, sexual orientation discrimination has been prohibited since 2001, Md. State Gov’t Code Ann. § 20-702, but same-sex marriages were not permitted until January 2013, after the testing was completed. Virginia neither prohibits sexual orientation discrimination in housing nor provides for same-sex marriages.

## The National Investigation

Embarking on the national investigation, the ERC worked closely with SAGE and other stakeholders to identify states that would be appropriate for testing. The goal of this selection process was to attain some measure of geographic diversity across the country, and to include states along the full spectrum of sexual orientation anti-discrimination protections and marriage equality. Through this process, ten states were selected for testing: Arizona, Colorado, Florida, Georgia, Michigan, Missouri, New Jersey, Ohio, Pennsylvania and Washington. Of these states, three (CO, NJ, WA) had statewide protections against housing discrimination based on sexual orientation, while the remaining seven (AZ, FL, GA, MO, MI, OH, PA) did not. At the time of testing, one state tested (WA) allowed same-sex marriages; one state (NJ) recognized civil unions and had various unsuccessful efforts to secure marriage equality that finally allowed for same-sex marriages after a state Superior Court decision in September 2013;<sup>25</sup> and one state (CO) allowed for civil unions only. The seven states tested that lacked anti-discrimination protections also lack relationship recognition for same-sex couples.

In order to examine whether housing providers and rental agents in the 10 selected states treated same-sex couples more adversely than opposite-sex couples, the ERC conducted 200 civil rights tests of age-restricted housing – either “55 and over” or “62 and over” – with 20 tests conducted in each state. The ERC reviewed demographic data for each state, and selected the five municipalities in each state containing the greatest concentration of senior residents (irrespective of sexual orientation). The ERC then identified senior housing located in those jurisdictions. Finally, the ERC conducted research to ensure that selected rental properties had units actually available for rent at the time of testing.

The testing, designed and conducted by the ERC, consisted of “matched pair” telephone tests, conducted between April 2013 and November 2013. Testing focused on independent living facilities primarily, as well as some continuing care and assisted living facilities where a significant portion of the community lives independently.<sup>26</sup> Communities tested ranged from large complexes with hundreds of units to smaller apartment complexes with less than 2 dozen units. All testers were at least 50 years old, and testers posing as part of a same-sex senior couple were all individuals who identify as gay, lesbian, or bisexual; while testers posing as part of an opposite-sex senior couple were all individuals who identify as heterosexual. Half of the tests were conducted by male pairs and half by female pairs. Testers, as part of their testing profile, posed as being in their 60s or 70s and currently in good health, but made inquiries where appropriate about additional facilities should the need for assisted living arise in the future. Testers were given similar personal and financial profiles including occupation, income, rental history, and credit history. The same-sex couple, as part of their profile, was married in a state that recognizes same-sex unions. To the extent that the testers’ profiles varied (except with respect to being in a same-sex or opposite-sex

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25 *Garden State Equality v. Dow*, L-1729-11 (N.J. Super. Ct. September 27, 2013) (granting plaintiffs’ motion for summary judgment).

26 Independent Living is a type of senior housing development that may provide supportive services (such as meals, housekeeping, social activities, and transportation), but is not focused on nursing or medical care. Continuing Care Retirement Communities (CCRC) provide a continuum of accommodations and services for seniors including, but not limited to, independent living, congregate housing, assisted living, and skilled nursing care. Assisted Living is a type of housing, generally considered at a service level below nursing care with services that include meals, laundry, housekeeping, medication reminders, and assistance with activities of daily living.



couple), the LGB senior tester was given slightly more attractive attributes than the heterosexual tester, such as a slightly higher annual income. All testers were screened, trained and supervised by ERC program staff. ERC program staff also coordinated all tests, including tester debriefing before and after each test.

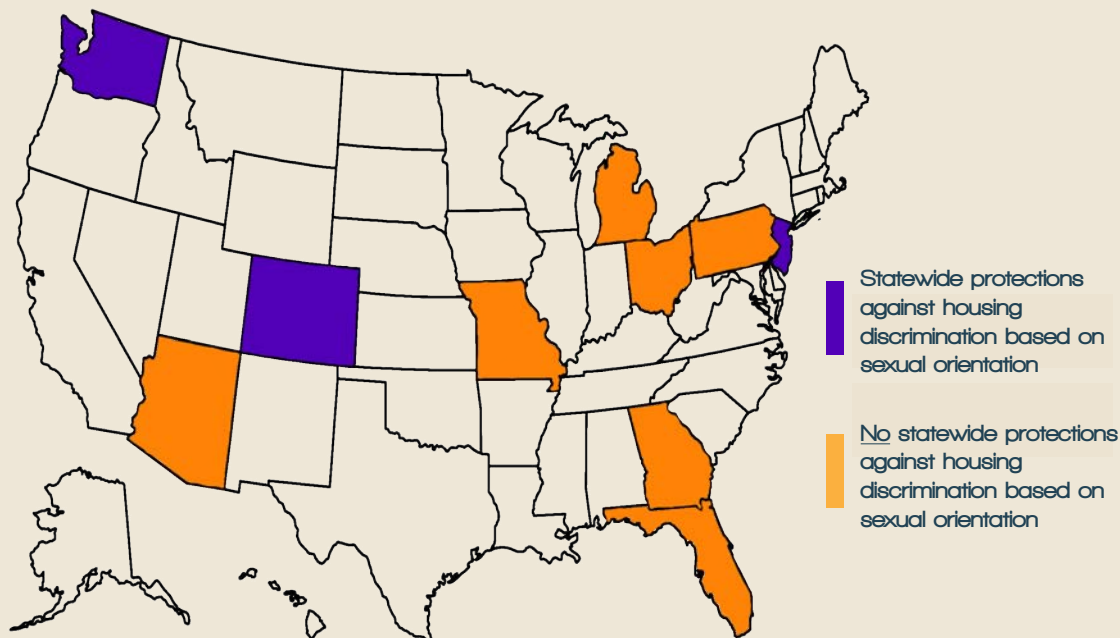
In each test, an advance call was first made to the senior housing community to determine availability and to gather information for developing appropriate tester profiles. Once availability was established, an LGB tester and a heterosexual tester each posed as a senior who rented housing and lived independently with their spouse, but was considering making the move to a senior living community. Testers contacted the property one day apart, with the LGB senior tester contacting the property first.

Each tester would inquire about housing availability for themselves and a spouse. For example, the LGB tester would state “hello, my name is Paul and I’m looking for an apartment for myself and my husband Jerry,” and the heterosexual tester would state “hello my name is Gary and I am looking for an apartment for myself and my wife Judy.” Testers would inquire about housing, and were instructed to tell the housing agent that they were somewhat flexible, but were generally looking to move within the next two months.

Testing data were compiled and analyzed by ERC staff, and involved reviewing the results of each matched-pair test to determine whether one tester received different information, or was treated differently from the matched tester.

## State-by-State Snapshot:

A look at the LGBT housing protections in the 10 states tested by the ERC

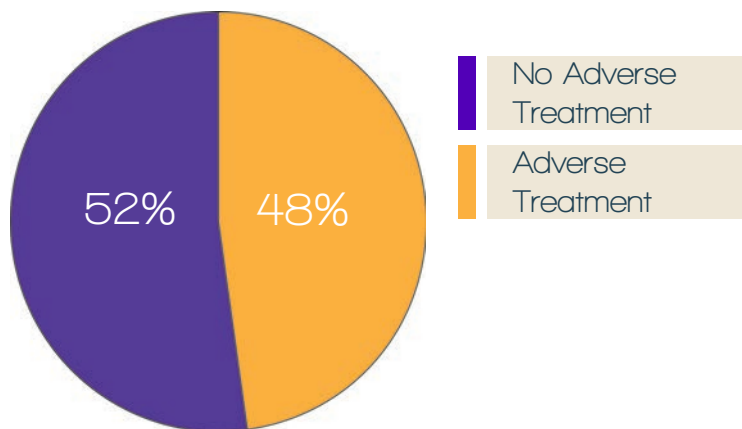




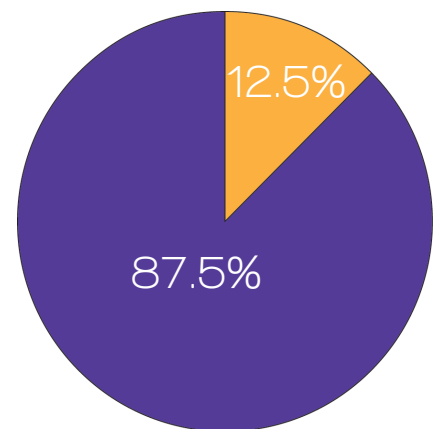
# Results

**In 96 of the 200 tests (48%) conducted, the LGB tester experienced at least one type of adverse, differential treatment.** In 25 tests (12.5%), the LGB tester experienced multiple forms of adverse, differential treatment. Among these tests, the ERC documented instances of:

- Housing providers giving the LGB tester fewer options than the matched heterosexual tester in terms of units available for rent.
- Housing providers quoting higher fees, rental price, and/or more extensive application requirements to the LGB tester.
- Housing providers providing the heterosexual tester, but not the LGB tester, with information regarding financial incentives, including promotions for visiting the facility.
- In some cases, while the testers inquired about 1-bedroom units, the LGB tester was only given information about 2-bedroom apartments, while the heterosexual tester was provided with the 1-bedroom information requested.



Percentage of LGB testers who experienced at least 1 form of adverse treatment



Percentage of LGB testers who experienced more than 1 form of adverse treatment



## National Trends

### Differences in Availability and Steering

One of the cornerstones of the principles of equal housing opportunity is to provide every similarly situated prospective tenant with the same number and range of options available for housing to the extent possible. In 20 of the 200 tests (10%), housing providers offered fewer units to LGB testers. In 12 of those tests, both testers spoke with the same agent. In 3 of these 20 tests, there was an outright denial of availability for the LGB tester, who was told there was no housing available at the community, while there were housing options made available for the heterosexual tester.

Sometimes, housing providers provide different availability as a way of “steering” housing seekers toward or away from certain units or certain areas within an apartment community. This type of residential steering is illegal if based on an individual trait protected under fair housing laws (such as race). In 1 test, the LGB tester was ‘steered’ away from the 1-bedroom units requested, and the rental agent only provided this tester with information about 2-bedroom units. In that same test, the heterosexual tester, was immediately provided with information about 1-bedroom units coming available in the requested timeframe. In 3 other tests, the LGB tester requested a 1-bedroom apartment unit, but was immediately given information only about 2-bedroom units and was only able to obtain information about 1-bedroom units after repeatedly insisting that he or she was only interested in 1-bedroom units. The heterosexual tester in these same tests, obtained information about 1-bedroom units upon the first request to the rental agent.

### Differences in Rental Price

For the majority of prospective tenants, rental cost is the most decisive factor in determining whether to rent at a particular apartment complex. Senior living is often expensive, and monthly rental rates may include a variety of services that are not included in “standard” apartment rents, such as meals, transportation, activities and access to other amenities. In 20 of the 200 tests (10%), the LGB tester was quoted a rent price at least \$100 more than was quoted to the heterosexual tester.<sup>27</sup> Testers spoke with the same agent in 7 of these 20 tests. In 6 of these 20 tests, a rental range, rather than a set amount, was provided, and the heterosexual tester was offered a rental option that was \$200 to \$500 less than the range provided to the LGB tester.

### Differences in Deposits and Fees

Like monthly rental rates, security deposits, community fees, and other fees and costs impact the affordability of a unit. In 42 of the 200 tests (21%), the LGB tester was subjected to additional and/or higher fees and deposits. In 21 of these tests, the testers received the different information from the same agent.

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<sup>27</sup> The ERC did not include all rent variances in its calculation of different rental prices, to account for daily adjustments in rates that take place in some rental properties as a matter of course. For purposes of this report, \$100 was identified as the benchmark to differentiate what was a significant price difference in rental amounts provided to the testers

## Differences in Amenities and Specials

Senior housing often offers a variety of amenities to make the community more attractive to a prospective renter. Such amenities may include the provision of meals, housekeeping services, access to recreational facilities, transportation to medical appointments, on-site medical care, and organized group activities. In 9 of the 200 tests (4.5%), the LGB tester received significantly less information regarding the amenities available at the facility despite speaking with the same agent.

Financial incentives to rent, or ‘specials,’ may also entice a prospective renter to choose a particular housing community. In 11 of the 200 tests (5.5%), the heterosexual tester was offered a special or incentive to rent, such as a rent reduction or waiving of fees, that was not provided to the LGB tester.

## Differences in the Application Process

In addition to standard application procedures, the application process for age restricted housing often includes health screenings and more in-depth financial information to determine one’s long-term ability to pay rent. In 22 of the 200 tests (11%), 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. In several of these cases, the heterosexual tester was provided with information such as the application process was really easy, or the community was very quick to process applications, while the LGB tester did not receive this encouragement from the housing provider.





## State Snapshot: Arizona

- The State of Arizona **does not** prohibit discrimination in housing on the basis of sexual orientation.
- Same-sex marriage **is not** recognized in Arizona.<sup>28</sup>
- Same-sex domestic partnerships or civil unions are not recognized in Arizona.<sup>29</sup>

In Arizona, LGB testers received adverse differential treatment in 16 of the 20 tests (80%). In 3 tests (15%), the LGB tester experienced two or more forms of less favorable treatment, such as being told of fewer available apartments while also being told of additional fees associated with renting an apartment such as a community fee or an extra person fee.

### Differences in Availability and Steering

- In 2 tests (10%), the heterosexual tester was told about additional units (ranging in number from 3 to 15 additional units) that were available, while the LGB tester was not told of these units.
- In 1 test (5%), after inquiring about the availability of 1-bedroom units, the LGB tester was only offered information about 2-bedroom units, until repeatedly insisting that they were interested only in a 1-bedroom unit.

### Differences in Deposits and Fees

- In 8 tests (40%), the LGB tester was told about greater and/or additional fees associated with renting at the property that were not mentioned to the heterosexual tester. In 2 of these tests, the LGB tester was told about a community fee ranging from \$1,000 to one month's rent (\$2,600+), while the heterosexual tester was not told about this fee. In another 2 of the 8 tests, only the LGB tester was told that there would be a "2nd person fee." This fee was \$175 in one instance and \$495 in another; the heterosexual tester by comparison was not told of this fee.

### Differences Regarding Amenities and Specials

- In 1 test (5%), the tester was given more information about amenities.
- In 2 tests (10%), the agent offered a special to the heterosexual tester that the LGB tester did not receive. In one instance, the heterosexual tester was advised of a price reduction of \$400-\$800. In the other test, the heterosexual tester was told that an unspecified portion of the security deposit would be waived.

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28 Ariz. Const. art. XXX, §1 ("Only a union of one man and one woman shall be valid or recognized as a marriage in this state.").

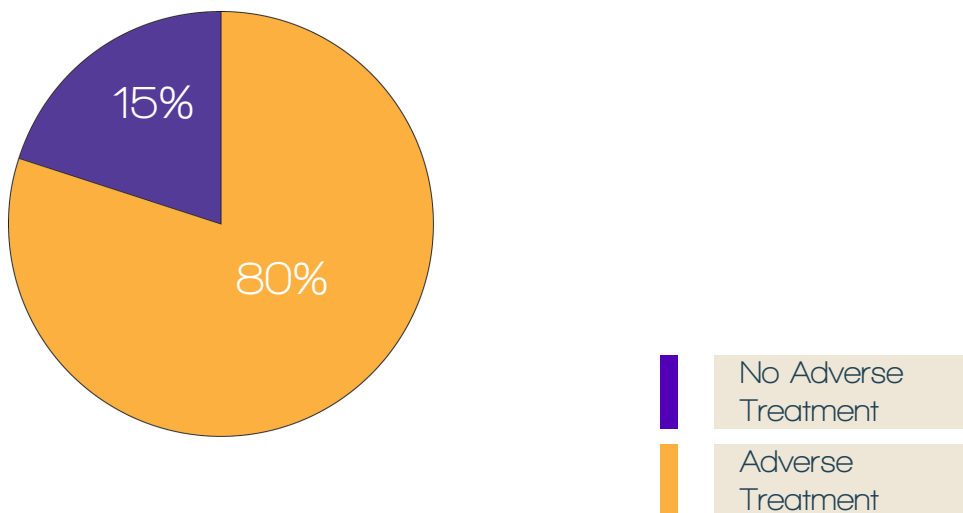
29 Local civil unions are authorized in Bisbee, Tucson, Jerome, and Sedona, while Phoenix and Tucson maintain domestic partnership registries.



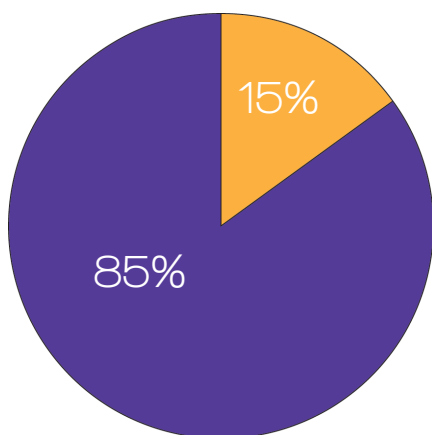
### Differences in the Application Process

- In 4 tests (20%), the agent advised only the LGB tester that a credit check, proof of income, and/or proof of assets would be required to rent, while these requirements were not mentioned to the heterosexual tester.

AZ: Percentage of LGB testers who experienced at least 1 form of adverse treatment



AZ: Percentage of LGB testers who experienced more than 1 form of adverse treatment



## State Snapshot: Colorado

- The state of Colorado prohibits discrimination in housing on the basis of sexual orientation.<sup>30</sup>
- Same-sex marriage **is not** recognized in Colorado.<sup>31</sup>
- Same-sex civil unions are recognized in Colorado.<sup>32</sup>

In Colorado, testers inquiring about rental housing for themselves and their same-sex spouses received adverse differential information in 10 of the 20 tests (50%). In 2 tests (10%), the LGB tester experienced two or more forms of less favorable treatment, such as being told of fewer application requirements while also being told of additional fees associated with renting an apartment such as a community fee or an extra person fee.

### Differences in Availability and Steering

- In 1 test (5%), the LGB tester was told there was no availability now or in the next 60 days, while the heterosexual tester was told there was one unit available now and others that would become available in the upcoming months.
- In 1 test (5%), both testers were told about 2 units, however the heterosexual tester was told of a less expensive option that was not mentioned to the LGB tester.

### Differences in Rental Price

- In 4 tests (20%), the LGB tester was quoted a more expensive rental price than the matched heterosexual tester, with a price differential of \$113 to \$400. In 2 of these tests, the testers spoke to the same agent.

### Differences in Amenities and Specials

- In 1 test (5%), the same agent provided the heterosexual tester with extensive details about the amenities of the facility and recent upgrades to the units, without providing similar information to the LGB tester.
- In another test, the same agent gave detailed information regarding activities offered by the housing provider to the heterosexual tester, but not to the LGB tester.

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30 Colo. Rev. Stat. § 24-34-502(1)(a) (2013).

31 Colo. Const. art. II, § 31 (“Only a union of one man and one woman shall be valid or recognized as a marriage in this state.”) (effective 2007).

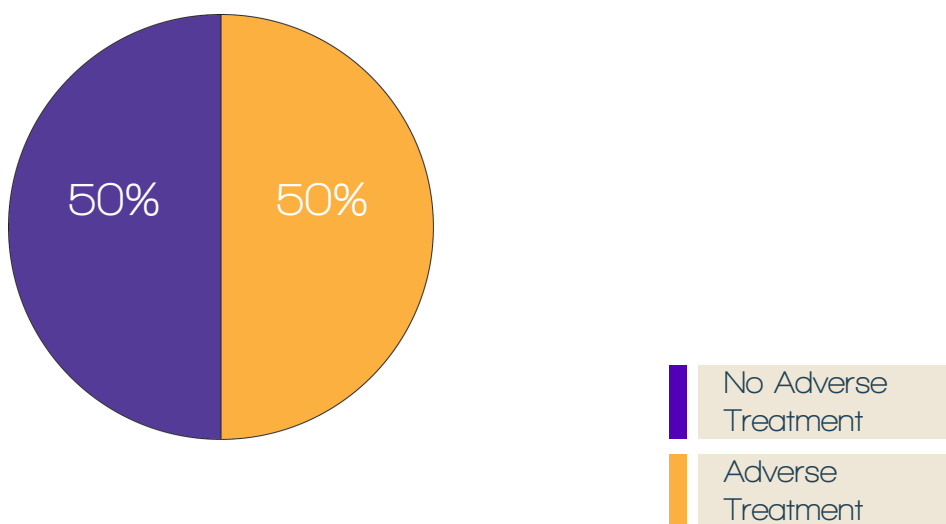
32 Colo. Rev. Stat. § 14-15-102 (2013) (“the general assembly, in the exercise of its plenary power, has the authority to define other arrangements, such as a civil union between two unmarried persons regardless of their gender, and to set forth in statute any state-level benefits, rights, and protections to which a couple is entitled by virtue of entering a civil union. ... Colorado courts may offer same-sex couples the equal protection of the law and to give full faith and credit to recognize relationships legally created in other jurisdictions that are similar to civil unions created by this article and that are not otherwise recognized pursuant to Colorado law.”).



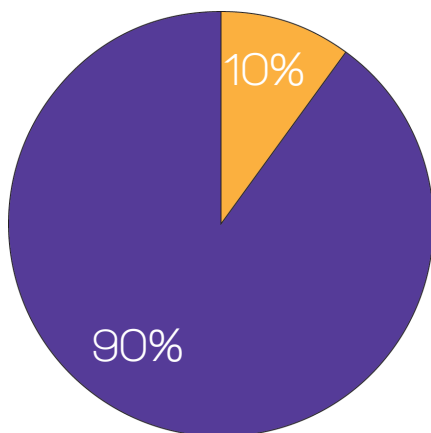
### Differences in the Application Process

- In 1 test (5%), the same agent advised only the LGB tester that a credit check, criminal history, and proof of income would be required to rent, but did not identify these as requirements to the heterosexual tester.
- In 1 test (5%), the same agent told only the LGB tester that there was a waitlist.

CO: Percentage of LGB testers who experienced at least 1 form of adverse treatment



CO: Percentage of LGB testers who experienced more than 1 form of adverse treatment



## State Snapshot: Florida

- The state of Florida **does not** prohibit discrimination in housing based on sexual orientation.
- The state of Florida **does not** recognize same-sex marriage.<sup>33</sup>
- The state of Florida **does not** recognize same-sex domestic partnerships or civil unions.

In Florida, LGB testers received adverse differential treatment in 9 of the 20 tests (45%). In 2 of the tests (10%), the LGB tester experienced two or more forms of less favorable treatment, such as being told of fewer available apartments while also being told of additional application requirements.

### Differences in Rental Price

- In 1 test (5%), the same agent quoted the LGB tester a rental price that was \$500 more than the price given to the heterosexual tester.
- In another test (5%), the LGB tester was quoted a rental range with a low end that was \$250 more than the lowest rental price quoted to the heterosexual tester.

### Differences in Deposits and Fees

- In 4 tests (20%), only the LGB tester was advised that there would be a “community fee” ranging from \$2,000 to \$2,500; the heterosexual tester was not advised of this requirement .
- In 1 test (5%), only the LGB tester was told about the security deposit of one month’s rent (\$4,500+).

### Differences in the Application Process

- In 1 test (5%), the same agent advised only the LGB tester that a health background check and medical paperwork would be required to rent an apartment.

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<sup>33</sup> Fla. Const. art. 1 (“Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.”).

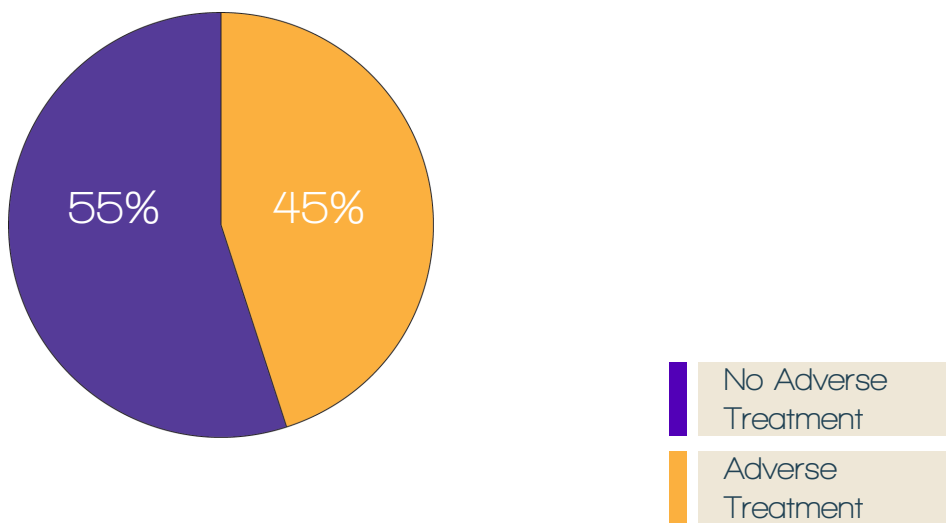




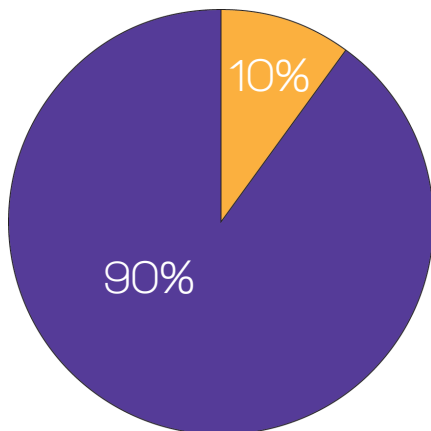
### Differences in Amenities and Specials

- In 1 test (5%), the heterosexual tester was offered a financial incentive to reduce the monthly 2nd person fee down from \$600 to \$300, while this special was not offered to the LGB tester.
- In another test (5%), the heterosexual tester was offered a financial incentive of three months of free cable service that was not offered to the LGB tester.

FL: Percentage of LGB testers who experienced at least 1 form of adverse treatment



FL: Percentage of LGB testers who experienced more than 1 form of adverse treatment



## State Snapshot: Georgia

- The state of Georgia **does not** prohibit discrimination in housing on the basis of sexual orientation.
- The state of Georgia **does not** recognize same-sex marriage.<sup>34</sup>
- The state of Georgia **does not** recognize same-sex domestic partnerships or civil unions.<sup>35</sup>

In Georgia, LGB testers received adverse differential treatment in 14 of the 20 tests (70%). In 8 tests (40%), the LGB tester experienced two or more forms of less favorable treatment, such as being told of fewer available apartments and additional application requirements.

### Differences in Availability and Steering

- In 5 tests (25%), the heterosexual tester was told about 1 to 3 additional units not mentioned to the LGB tester. In one of these tests, the heterosexual tester was told about housing cottages (as opposed to apartments) that were not identified for the LGB tester.
- In 1 test (5%), the same agent gave the LGB tester primarily information about 2-bedrooms while providing the heterosexual tester with the 1-bedroom information requested, despite both testers specifically inquiring about 1-bedroom units.

### Differences in Rental Price

- In 2 tests (10%), the LGB tester was quoted a rental price that was \$300 to \$500 more than the price quoted to the heterosexual tester.
- In 2 tests (10%), the LGB tester was provided a rental range with the lowest rent being \$235 to \$545 higher than the lowest rent offered to the heterosexual tester.

### Differences in Deposits and Fees

- In 8 tests (40%), the LGB tester was told about one or more fees required to rent an apartment that were not mentioned to the heterosexual tester. In 5 of these tests, this included a community fee ranging from \$1,250 to one month's rent (\$3,200+). Additional fees quoted only to the LGB tester also included a security deposit ranging from \$200 up to one month's rent, application fees (\$14-\$100), a monthly washer/dryer charge (\$50/month), and a hold fee (\$100 -\$500).

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34 Ga. Const. art. I, § IV(1)(a) ("This state shall recognize as marriage only the union of man and woman").

35 The following Georgia cities and counties maintain domestic partnership registries: Unified Gov. of Athens-Clarke County; Fulton County and City of Atlanta. See Human Rights Campaign (HRC), City and County Domestic Partnership Registries, <http://www.hrc.org/resources/entry/city-and-county-domestic-partner-registries> (visited Dec. 27, 2013).



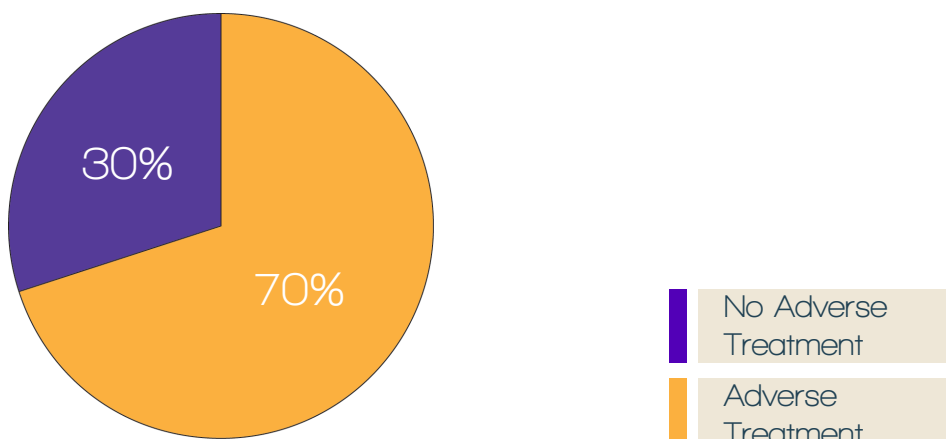
### Differences in Amenities and Specials

- In 1 test (5%), the same agent advised the heterosexual tester about a variety of available amenities (transportation to doctor's appointments, meals, convenience store, beauty shop, gym, gated community, parking, pets permitted) that were not mentioned to the LGB tester.

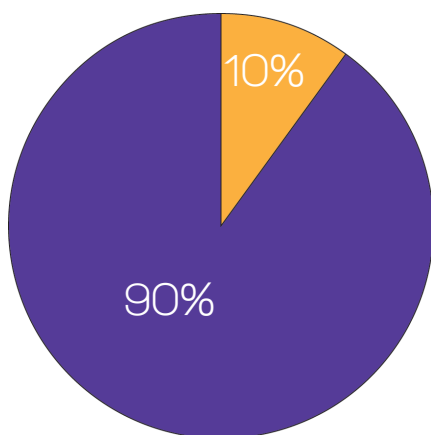
### Differences in the Application Process

- In 2 tests (10%), the same agent only advised the LGB tester that a credit check would be required to rent an apartment.
- In 1 test (5%), only the LGB tester was told that a five-page application had to be completed just to join a waiting list.
- In 1 test (5%), only the LGB tester was advised that a health report needed to be completed as a condition of renting.
- In 1 test (5%), only the LGB tester was advised that there was a \$500 deposit required to hold the apartment

GA: Percentage of LGB testers who experienced at least 1 form of adverse treatment



GA: Percentage of LGB testers who experienced more than 1 form of adverse treatment



## State Snapshot: Michigan

- The state of Michigan **does not** prohibit discrimination on the basis of sexual orientation.<sup>36</sup>
- The state of Michigan **does not** recognize same-sex marriage.<sup>37</sup>
- The state of Michigan **does not** recognize same-sex domestic partnerships or civil unions.

In Michigan, LGB testers received adverse differential treatment in 7 of the 20 tests (35%). In 1 test (5%), the LGB tester experienced multiple forms of less favorable treatment, being quoted a higher rent price, additional fees, and being told of fewer units than the heterosexual tester.

### Differences in Availability and Steering

- In 1 test (5%), the LGB tester was offered one fewer unit than was offered to the heterosexual tester. In this test, the heterosexual tester was provided a rental price \$220 less than the lowest price offered to the LGB tester.

### Differences in Rental Price

- In 3 tests (15%), the LGB tester was quoted a rental price that was \$122 to \$220 more than the price quoted to the heterosexual tester.

### Differences in Deposits and Fees

- In 1 test (5%), the LGB tester was informed that there was a mandatory community fee of one month's rent, while the heterosexual tester was not told about this fee.

### Differences in Amenities and Specials

- In 1 test (5%), the heterosexual tester was told they could rent a 2-bedroom apartment for the price of a 1-bedroom until a 1-bedroom became available.
- In 1 test (5%), the agent asked only the heterosexual tester if he or his wife were veterans, stating that they offer discounts to veterans.

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<sup>36</sup> According to Equality Michigan, as of October 2013, 29 cities in the state prohibit housing discrimination based on sexual orientation. See Equality Michigan, *Cities with Legal Protection*, <http://www.equalitymi.org/resources/cities-with-legal-protection> (visited Dec. 27, 2013). A thirtieth city, Royal Oak, MI, passed an anti-discrimination ordinance in November. Dave Phillips, *Human rights ordinance passes in Royal Oak*, OAKLAND PRESS, Nov. 5, 2013.

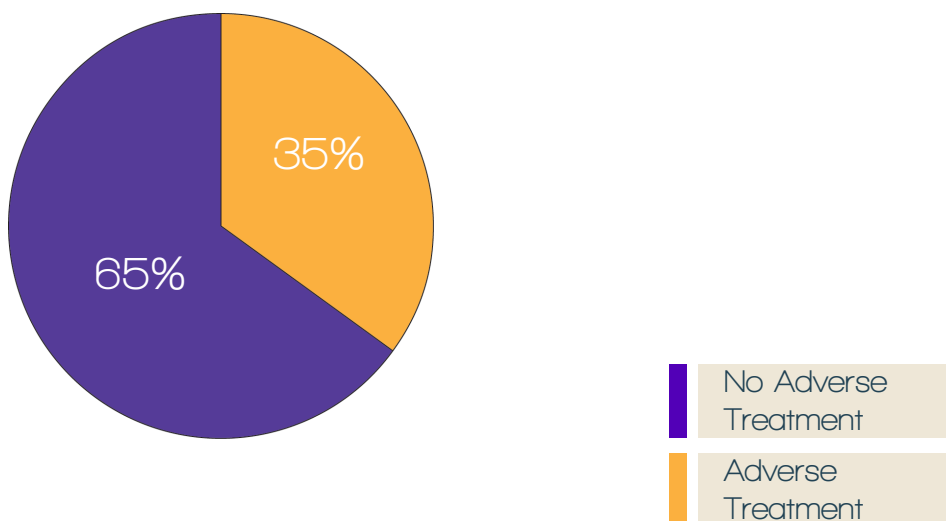
<sup>37</sup> Mich. Const. art. I, § 25 (“To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.”).



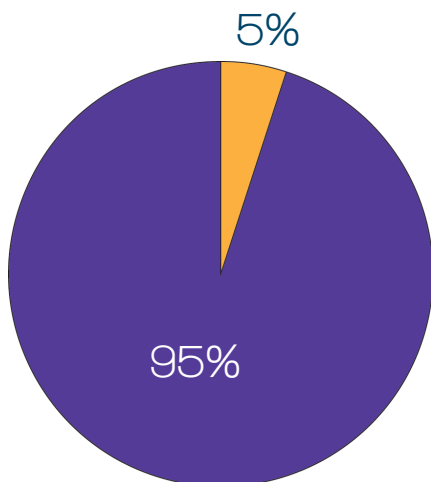
## Differences in the Application Process

- In 1 test (5%), only the LGB tester was informed that proof of income was a rental requirement.

MI: Percentage of LGB testers who experienced at least 1 form of adverse treatment



MI: Percentage of LGB testers who experienced more than 1 form of adverse treatment



## State Snapshot: Missouri

- The state of Missouri **does not** prohibit discrimination in housing based on sexual orientation.
- The state of Missouri **does not** recognize same-sex marriage.<sup>38</sup>
- The state of Missouri **does not** recognize same-sex domestic partnerships or same-sex civil unions.

In Missouri, LGB testers received adverse differential treatment in 9 of the 20 tests (45%). In 2 tests, the LGB tester experienced two forms of less favorable treatment, being told about a higher price and additional required fees.

### Differences in Rental Price

- In 3 tests (15%), the LGB tester was quoted a rental price range, with the lowest price in the range \$280-\$475 higher than the lowest rental price quoted to the heterosexual tester.
- In another 3 tests (15%), the heterosexual tester was asked about his veteran status and subsequently told that they offered discounts to veterans. The LGB tester was not asked about or given this information.

### Differences in Deposits and Fees

- In 3 tests (15%), the LGB tester was told about required fees not identified to the heterosexual tester. This included “extra person” fees ranging from \$190-\$300/month, and security deposits ranging from \$300 to up to one month’s rent.

### Differences in Amenities and Specials

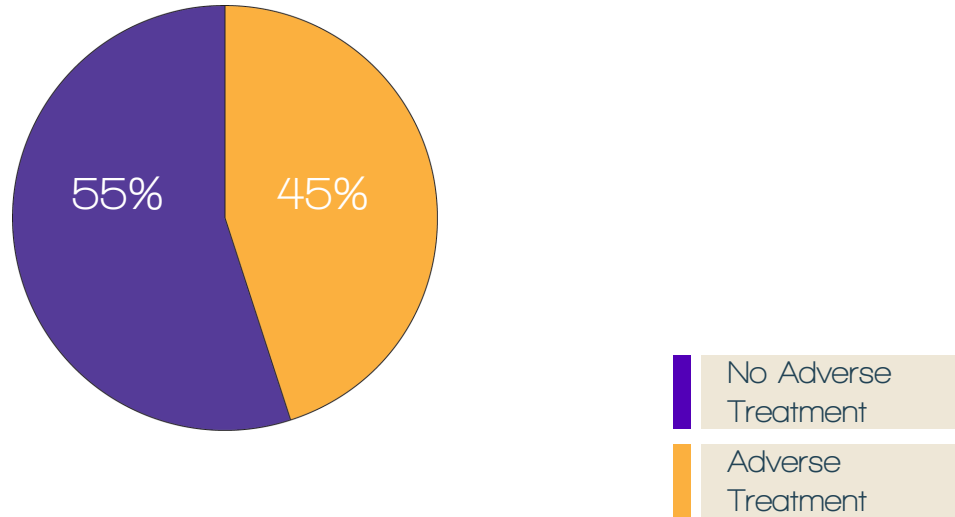
- In 2 tests (10%), the heterosexual tester was offered a special or discount that was not offered to the LGB tester. In one of these tests, the heterosexual tester was offered a 50% reduction in rent for six months, if they joined the waiting list by a certain date. In the other test, the heterosexual tester was told that the monthly “2nd person fee” was negotiable.

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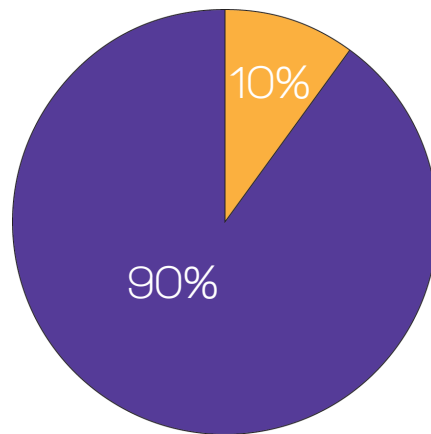
38 Mo. Const. art. I, § 33 (“That to be valid and recognized in this state, a marriage shall exist only between a man and a woman.”).



MO: Percentage of LGB testers who experienced at least 1 form of adverse treatment



MO: Percentage of LGB testers who experienced more than 1 form of adverse treatment



## State Snapshot: New Jersey

- The state of New Jersey **does** prohibit discrimination in housing based on sexual orientation.<sup>39</sup>
- The state of New Jersey began recognizing same-sex marriage midway through the ERC's testing.<sup>40</sup>

In 8 of the 20 tests (40%) conducted in New Jersey, the LGB tester was treated less favorably than the heterosexual tester. In 3 of these tests (15%), the LGB tester experienced two or more forms of less favorable treatment, such as being told of fewer available apartments and additional required fees.

### Differences in Rental Price

- In 1 test (5%), the LGB tester was told of a rental range where the lowest price was \$500 more than the price quoted to the heterosexual tester.

### Differences in Fees and Deposits

- In 6 tests (35%), the LGB tester was either told about a deposit or fee that was not required of the matched tester, or was provided with a higher dollar amount for these costs. In one of these tests, only the LGB tester was informed about a required entry fee of \$3,000. In another test, the LGB tester was told about a community fee of one month's rent (\$5,700 - \$5,900). In 1 test, the agent only advised the LGB tester of a waitlist fee to hold the unit of \$1,000. In the remaining 3 tests, only the LGB tester was informed about the requirements of a security deposit and/or application and credit check fees.

### Differences in Amenities and Specials

- In 1 test (5%), the heterosexual tester was advised of additional amenities or community features not mentioned to the LGB tester.

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39 N.J. Stat. Ann. § 10:5-12(g) (including “affectional or sexual orientation” in categories protected from housing discrimination).

40 *Garden State Equality v. Dow*, L-1729-11 (N.J. Super. Ct. September 27, 2013).

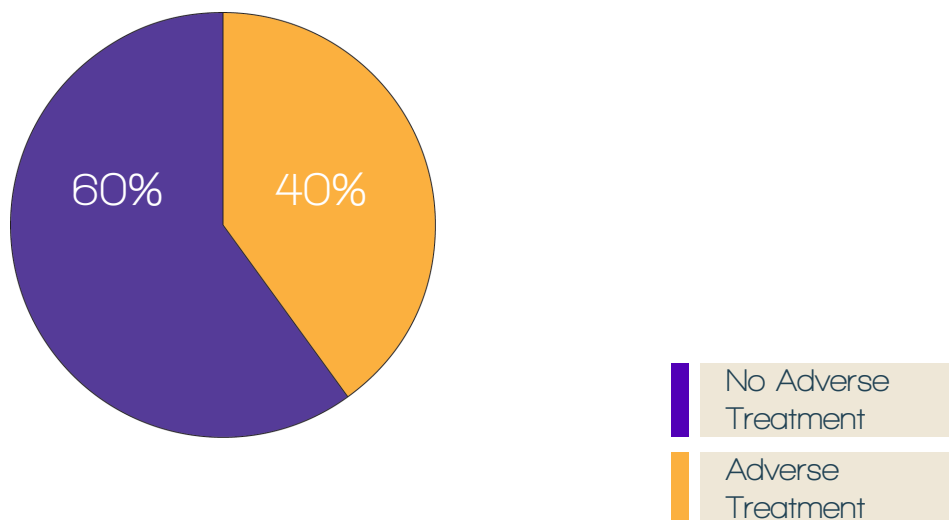




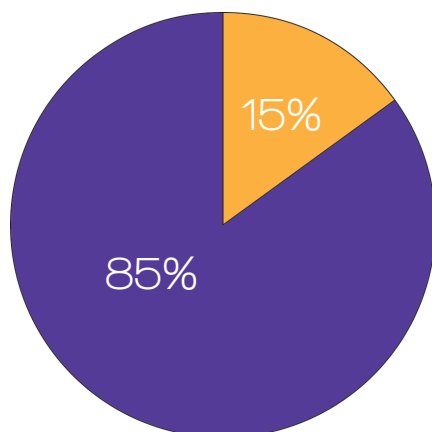
### Differences in the Application Process

- In 3 tests (15%), the LGB tester was advised of one or more of the following additional requirements not identified to the heterosexual tester: credit check, background check, criminal history check, an application “evaluation” process, and a requirement to provide financial information.
- In 1 test (5%), the LGB tester was told that there was a waiting list for all units, and that he could put his name on the list for \$1,000. The opposite-sex couple tester was not advised of any waiting list or fee.

NJ: Percentage of LGB testers who experienced at least 1 form of adverse treatment



NJ: Percentage of LGB testers who experienced more than 1 form of adverse treatment



## State Snapshot: Ohio

- The state of Ohio **does not** prohibit discrimination in housing based on sexual orientation.<sup>41</sup>
- The state of Ohio **does not** recognize same-sex marriage.<sup>42</sup>
- The state of Ohio **does not** recognize same-sex domestic partnerships or civil unions.

In Ohio, LGB testers received adverse differential treatment in 9 of the 20 tests (45%). In 1 of these tests (5%), the LGB tester experienced two or more forms of less favorable treatment, such as being told about additional fees and additional steps to renting an apartment.

### Differences in Availability and Steering

- In 1 test (5%), the heterosexual tester was told about one additional unit than what was offered to the LGB tester.
- In 1 test (5%), the LGB tester was told no 1-bedroom units were available, but there would be 2-bedroom units during the desired move-in period. The heterosexual tester, by comparison, was told a 1-bedroom would be available.

### Differences in Deposit, and Fees

- In 3 tests (15%), the LGB tester was advised of additional fees required to rent. The fees were: a monthly “extra person fee” ranging from \$450 to \$500 in two tests; and a \$300 security deposit and \$30 application fee in one test.

### Differences in Amenities

- In 1 test (5%), the heterosexual tester was told about one additional unit than what was offered to the LGB tester.

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41 The Ohio Legislature considered a bill proposing a statewide ban on housing discrimination based on sexual orientation in 2009 and 2011, but the bill failed to pass both houses. Tom Feran, *ProgressOhio says Ohio lacks a law prohibiting employment and housing discrimination on the basis of sexual orientation: PolitiFact Ohio*, April 3, 2013, [http://www.cleveland.com/open/index.ssf/2013/04/progressohio\\_says\\_ohio\\_lacks\\_a.html](http://www.cleveland.com/open/index.ssf/2013/04/progressohio_says_ohio_lacks_a.html) (visited Dec. 27, 2013).

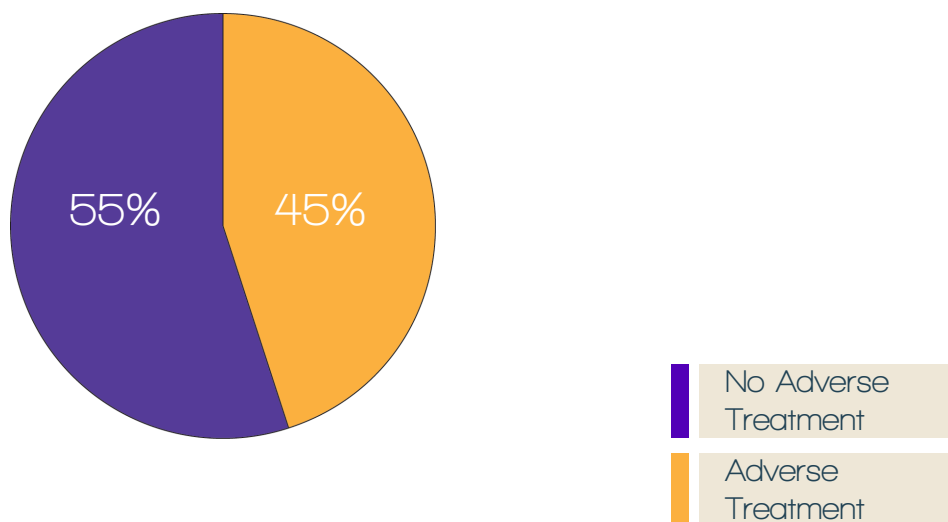
42 Ohio Const. art. 15, § 11 (“Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.”)



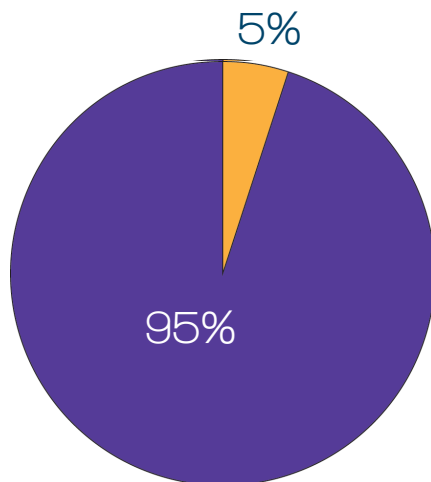
### Differences in the Application Process

- In 1 test (5%), only the LGB tester was told that they would need to provide a complete list of the medications they take with their application.
- In 3 tests (15%), the LGB tester was told of one or more of the following that was not required of the heterosexual tester: background check, criminal check, income-minimum, and proof of income.

OH: Percentage of LGB testers who experienced at least 1 form of adverse treatment



OH: Percentage of LGB testers who experienced more than 1 form of adverse treatment



## State Snapshot: Pennsylvania

- The state of Pennsylvania **does not** prohibit discrimination in housing based on sexual orientation.<sup>43</sup>
- The state of Pennsylvania **does not** recognize same-sex marriage.
- The state of Pennsylvania **does not** recognize same-sex domestic partnerships or civil unions.

In Pennsylvania, LGB testers received adverse differential treatment in 8 of the 20 tests (40%). In 2 tests (10%), the LGB tester experienced two or more forms of less favorable treatment, such as being told about additional fees and additional steps to renting an apartment.

### Differences in Availability and Steering

- In 2 tests (10%), the LGB tester was offered fewer units than were offered to the heterosexual tester.
- In 1 test (5%), the heterosexual tester was advised of additional availability at a newer sister property.

### Differences in Rental Price

- In 1 test (5%), the LGB tester was provided with a rental range in which the lowest rent cost was \$100 higher than the lowest rent quoted to the heterosexual tester.

### Differences in Deposit and Fees

- In 3 tests (20%), the LGB tester was told about a deposit or fee that was not required of the heterosexual tester. These deposits and fees include: a security deposit and application fee totaling \$4,500; a hold fee of \$250; and a new resident fee of \$1,000.

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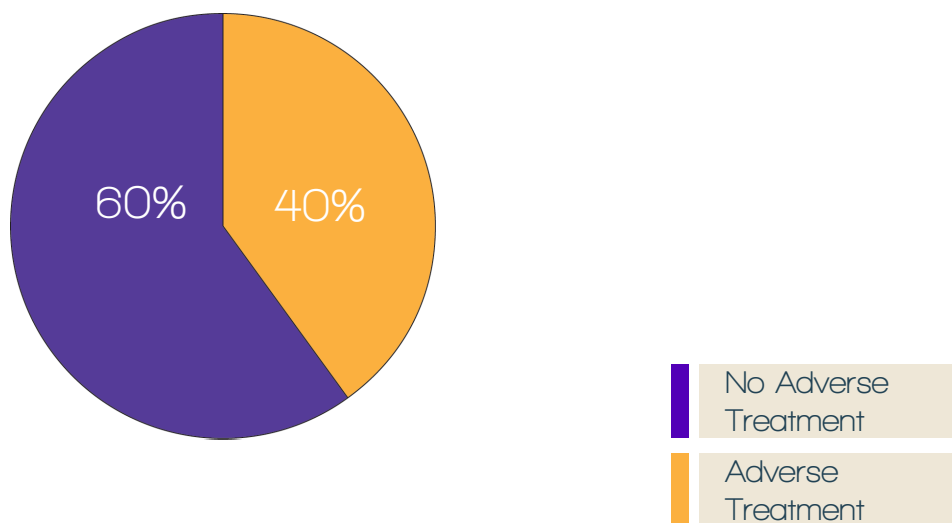
<sup>43</sup> A bill was introduced in the Pennsylvania state Senate in August 2013 that would add sexual orientation and gender identity to the statewide protections in the Pennsylvania Human Relations Act. *See* S.B. 300, Reg. Sess. 2013-2014 (Pa. 2013).



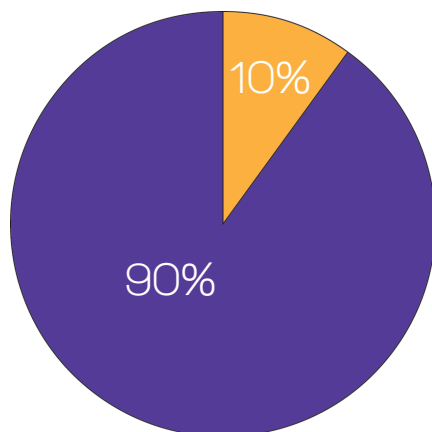
### Differences in Amenities

- In 3 tests (15%), the same agent described the amenities offered by the housing provider without being prompted by the heterosexual couple tester. This included being told about the following activities: clubhouse, exercise room, and pool in one test; and housekeeping and transportation in the other.

PA: Percentage of LGB testers who experienced at least 1 form of adverse treatment



PA: Percentage of LGB testers who experienced more than 1 form of adverse treatment



## State Snapshot: Washington

- The state of Washington does prohibit discrimination in housing based on sexual orientation.<sup>44</sup>
- The state of Washington does recognize same-sex marriage.<sup>45</sup>

In Washington, LGB testers received adverse differential treatment in 6 of the 20 tests (30%). In 1 of these tests (5%), the LGB tester experienced two or more forms of less favorable treatment, being told about additional fees and a higher rental price of apartments.

### Differences in Availability

- In 1 test (5%), the LGB tester was told there were no apartments available, while the heterosexual tester was offered availability.

### Differences in Rental Price

- In 2 tests (10%), the LGB tester was quoted rent price that was \$140 to \$165 more than the rental price quoted to the heterosexual tester.

### Differences in Deposits and Fees

- In 3 tests (15%), the LGB tester was told of a deposit or fee that was not required of the matched heterosexual tester. These fees were: a \$500 security deposit, a monthly extra second person fee of \$650, a \$200 holding fee, and a \$80 application fee.

### Differences in Specials

- In 1 test (5%), the heterosexual tester was asked if he was a veteran and advised of a discount offered to veterans. This special was not shared with the LGB tester.

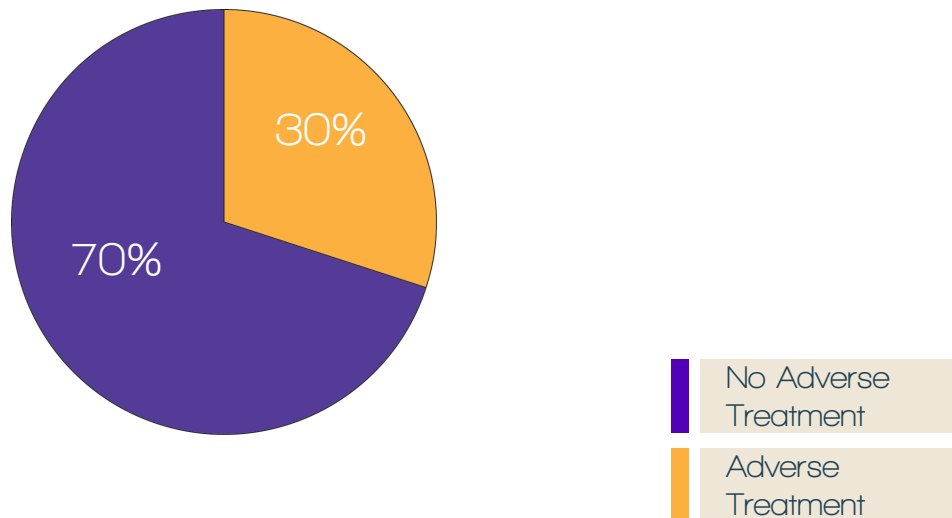
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44 Wash. Rev. Code § 49.60.030 (2009).

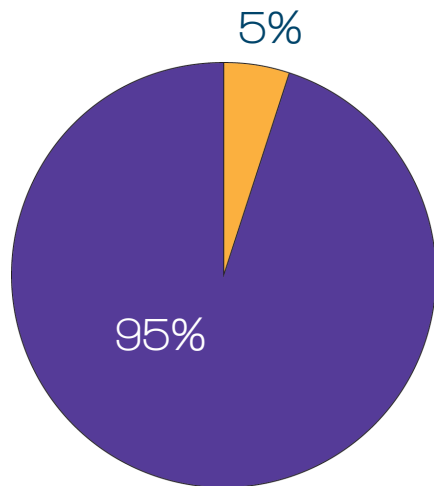
45 Wash. Rev. Code § 26.04.010 (“Marriage is a civil contract between two persons who have each attained the age of eighteen years, and who are otherwise capable.”) (2012).



WA: Percentage of LGB testers who experienced at least 1 form of adverse treatment



WA: Percentage of LGB testers who experienced more than 1 form of adverse treatment





## Recommendations

In order to address, prevent, and remediate discrimination against senior same-sex couples as they seek housing, a multi-pronged approach is essential. Although several prominent organizations such as SAGE and AARP are mobilizing around the issue of LGBT housing discrimination, a coordinated response with contributions from a wider array of stakeholders is urgently needed. To foster this change, the ERC makes the following recommendations.

### Recommendation 1: Legislation Prohibiting Housing Discrimination Based On Sexual Orientation and Gender Identity is Essential.

In 29 states, seniors lack statewide anti-discrimination protections for sexual orientation, allowing housing providers to act with impunity when they deny housing or offer adverse, differential terms and conditions. In the seven states without protections that were included in the testing here, rates of adverse, differential treatment ranged from 40% to 80%, with each state having at least one, and as many as eight, tests including two or more forms of adverse treatment. In many of these states, some of the testing occurred in cities and counties with local anti-discrimination ordinances, making these high rates of different adverse treatment even more egregious.

As LGBT seniors move into senior housing, relocate to be closer to family and friends, or move to a more desirable geographic region, their rights and remedies may change. The patchwork of anti-discrimination protections creates an unacceptable “lottery of where you live,” with LGBT individuals and couples gaining or losing protections as they cross state and county borders.

The federal Fair Housing Act— the standard bearer for addressing housing discrimination nationwide – should be amended to include sexual orientation and gender identity as protected classes.





Moreover, states and local jurisdictions must protect the rights of all their residents, particularly a highly vulnerable and newly emerging community, such as LGBT seniors, with enforceable anti-discrimination laws. While some cities and counties have passed local ordinances, the lack of federal and statewide protections results in a patchwork of inconsistent ordinances that are less effective, do not fully cover all issues, or provide sufficient remedies and avenues for enforcement.

## Recommendation #2: Existing Legal Protections Must be Enforced When Housing Discrimination Does Occur.

The three states with statewide anti-discrimination laws that were included in the testing investigation generally fared better than the states without a law, but still saw significant problems – with rates of differential treatment ranging from 30% to 50%. Only one of these states (NJ) had any tests with multiple forms of differential treatment. Notably, the only state to have a statewide law and full marriage equality throughout the testing (WA) had the lowest rate of differential treatment across all states (30%), and the state with no marriage recognition (CO) had the highest rate of differential treatment among the three (50%).

Legal protections are only as effective as they are enforced. Without strong accountability mechanisms, and resources for a comprehensive enforcement system, housing providers that choose to violate fair housing laws will continue to discriminate. Moreover, the extent of the problem will never be identified as LGBT individuals and couples have no incentive to bring discrimination complaints if they lack meaningful remedies and remain subject to retaliation. While HUD has become proactive in addressing this issue in federally subsidized facilities, individuals and organizations need an avenue to bring complaints to court, when needed. A robust enforcement system is critical to ensuring that progress in passing increased protections actually translates into better fair housing practices for the entire LGBT community, including seniors.

## Recommendation #3: Senior Housing Providers Must Adopt Anti-Discrimination Policies and Practices, and Be Sensitive to the Unique Needs of LGBT Seniors.

A history of discrimination and abuse based on homophobia and transphobia, along with a related fear of whether it is safe and feasible to maintain an open and out lifestyle, can cause great distress for same-sex couples as they seek senior housing. An inclusive and accepting environment is crucial for LGBT seniors, particularly since senior living residents are sometimes dependent on housing providers for their care and well-being.

Anti-discrimination policies and practices are crucial to establishing an inclusive and accepting environment. In addition to establishing a tone of acceptance for the entire community, such a policy – and a practice that enforces it – will allow for accountability when such a tone is breached. Having an anti-discrimination policy not only ensures compliance with any relevant state law or local ordinance, but is also good business. An open and accepting environment encourages the broadest clientele, and enhances word of mouth about the community by people who live there.

Awareness and sensitivity training for housing providers is also needed to alleviate needless suffering by LGBT community residents. Regardless of whether they are aware of an “out” resident or staff member, housing providers must provide an open and supportive environment.

## Recommendation #4: LGBT Seniors Should Know Their Housing Rights and the Resources Available.

The patchwork of anti-discrimination laws nationwide makes it difficult for LGBT seniors to know what their rights are, and what remedies are available to them should they encounter housing discrimination. In addition to providing training to staff of senior living facilities, tenants and prospective tenants should be aware of their fair housing rights and the benefits of a diverse, accepting community. LGBT seniors need to know about the protections afforded to them under state and local law, including what they can do if they encounter discrimination and the local fair housing resources available.

## Recommendation #5: Further Research Must Be Conducted to Provide Additional Data on Housing Discrimination Against Other Older LGBT Adults.

The policy advocacy necessary to effect the change needed to protect LGBT seniors is currently hamstrung by a dearth of quantitative data demonstrating the scope and severity of this type of discrimination. While the testing underlying this report is a valuable first step to fill this “data void,” the commitment of additional resources to undertake additional research and testing is critical to understanding and righting the wrongs that exist.

There is very little data available about LGBT older people, and the issues that they face. In addition to helping better define and understand the barriers that LGBT seniors face, further data is needed to generate the political will for policy changes, where protections are currently lacking, and for funding of needed services. This investigation is merely a starting point for quantitative data on the housing needs of LGBT seniors. Further studies are increasingly important as LGBT seniors become increasingly visible. In particular, future testing should examine discrimination against LGBT seniors based on gender identity, gender expression, non-marital status, and the intersection of race and sexual orientation.





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