



# **Housing Discrimination in the Transgender and Gender Non- Conforming Community in North Dakota**

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In the past five sessions of the North Dakota Legislature, Human Rights activists worked with ND legislators to introduce legislation to amend North Dakota Century Code Chapter 14-02.4 the Human Rights Act to include protections for LGBT status in housing and employment. Hearings in support of the legislation included many personal stories about individuals who experienced discrimination in their work and in their lives in North Dakota. Despite these important and often heartbreaking stories, North Dakota's Legislature repeatedly voted against adding LGBT status as a protected class and in some years the legislation did not make it out of committee.

During the 2017 hearing, several committee members still expressed doubt about the veracity of the discrimination claims from those that testified in support of the bill or didn't believe that the discrimination was pervasive enough to merit inclusion in the Human Rights Act. In response to these concerns, High Plains applied for funding from the Consensus Council to complete a series of housing discrimination testing based on transgender or gender non-conforming individuals.

### **Fair Housing Testing**

Fair Housing Testing is a tool used in fair housing investigations that measures the quality, quantity, content of information and customer service given to potential renters or home buyers by a housing provider. Testers pose as individuals seeking housing by contacting housing providers to inquire about available units. In a rental test scenario, test coordinators select testers who are as similar as possible in all ways except the protected class (or in this case, potential protected class) involved. Based on the test scenario, testers separately visit the site of a housing provider (within an appointed time period) and inquire about the availability of housing. Afterwards, the testers objectively record everything that happened during the test — what are the terms and conditions, what units the testers were shown, what price was quoted for an available apartment, how the tester was greeted and treated, etc. The test coordinator then compares the testers' objective reports to determine whether a difference in treatment based on the protected class occurred.

There are many types of testing used in Fair Housing Testing. In this study, we used matched-pair testing which allows for the comparison of how people are treated differently during the housing search process. One essential facet of testing is to ensure pairs are well matched on all variables except the one variable or characteristic to be tested—this procedure ensures that test results are unambiguous. The matched characteristics of the tester pairs in this study included race, age range, education, employment, household size, and income. The single variable that differed between matched testers was comparing gender (transgender vs. non transgender-cisgender). To minimize the risk of detection by housing providers during testing, some of the characteristics assigned to a test pair were slightly enhanced to favor the protected tester.

Michelle Rydz, Executive Director  
High Plains Fair Housing Center, 2018

This project addresses the question of housing discrimination in the transgender community in North Dakota. It is extraordinarily difficult for someone to come forward and discuss their experiences as victims of discrimination when there is no recourse or remedy for themselves or their families.

Blatant incidents of housing discrimination do still occur but are becoming increasingly rare. It is much more common for housing discrimination to present as a barrier to housing or unequal access to housing based on different rental terms and discrimination. Examples of this include offering a transgender person fewer units, higher deposits or fees, less favorable rent terms, untruths, incomplete information, and subtle discouragement. Individuals who are given misleading or inaccurate information about the availability of housing may never know that they have been treated unlawfully because they have no way of comparing their treatment to anyone else's.

### **Discrimination law on the basis of sex are evolving**

Sex is a federally protected class under the fair housing act and in employment discrimination. Transgender people have brought discrimination claims in the past but were unsuccessful because lack of a clear definition of sex (gender) in the laws. Most reasoned, that the laws were written to protect cisgender individuals.

In *Price Waterhouse v. Hopkins* (1989) the Supreme Court extended the definition of “sex” to cover women who were not perceived as feminine enough thus advancing the sex stereotyping theory. In this case, transgender plaintiffs argued that they had been discriminated against based on sex stereotypes for not dressing and behaving according to their anatomical sex.

In 2013, HUD promulgated a final rule “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity.” The LGBT Equal Access Rule requires housing assisted by HUD, housing subject to mortgages insured by the Federal Housing Administration (FHA), and FHA-insured mortgages to be provided without regard to actual or perceived sexual orientation, gender identity, or marital status. Additionally, HUD recognizes its authority under the Fair Housing Act to pursue housing discrimination complaints from LGBT individuals. (<https://www.hudexchange.info/resource/1991/equal-access-to-housing-final-rule/>)

Since the issuance of the guidance, HUD and their state and local enforcement partners have pursued over 200 housing discrimination cases. Most have involved allegations of discrimination because of non-conformity with gender stereotypes especially from transgender and gender non-conforming persons alleging discrimination. (New Jersey Lawyer, June, 2013).

Three cases that fair housing groups are watching include to see how the expanding definition of Sex is being interpreted by the courts include;

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**Wetzel v. Glen St Andrew living community:**

Within months of her arrival at St. Andrew, a residential community for older adults, Wetzel physical and verbal abuse from other residents because she is openly lesbian. She repeatedly asked St. Andrew's staff to help her. The staff limited her use of facilities and built a case for her eviction. Wetzel sued St. Andrew, alleging that it failed to provide her with non-discriminatory housing and that it retaliated against her because of her complaints, citing the Fair Housing Act, 42 U.S.C. 3601–3619. The district court dismissed Wetzel's suit. The Seventh Circuit reversed, reading the FHA "more broadly." Not only does the FHA create liability when a landlord intentionally discriminates against a tenant based on a protected characteristic; it also creates liability against a landlord that has actual notice of tenant-on-tenant harassment based on a protected status, yet chooses not to take any reasonable steps within its control to stop that harassment. (<https://law.justia.com/cases/federal/appellate-courts/ca7/17-1322/17-1322-2018-08-27.html>)

**Smith v. Avanti**

In April 2017, a Colorado federal district court ruled that a property owner discriminated in violation of the Fair Housing Act and Colorado Anti-Discrimination Act on the basis of sex and familial status when she refused to rent a townhouse to a transgender woman, her wife, and their two children. The prospective tenants argued that the property owner had violated the law by discriminating against them based on sex stereotypes; the judge agreed with the contention that discrimination against women for failure to conform to stereotype norms concerning to or with whom a woman should be attracted, should marry, and/or have children is discrimination on the basis of sex under the Fair Housing Act. The judge held that the property owners had discriminated on the basis of sex in violation of both the Fair Housing Act and the Colorado law based on sexual stereotyping, and that she had discriminated on the basis of sexual orientation in violation of the Colorado Anti-Discrimination Act. (NFHA, 2018 Trends Report).

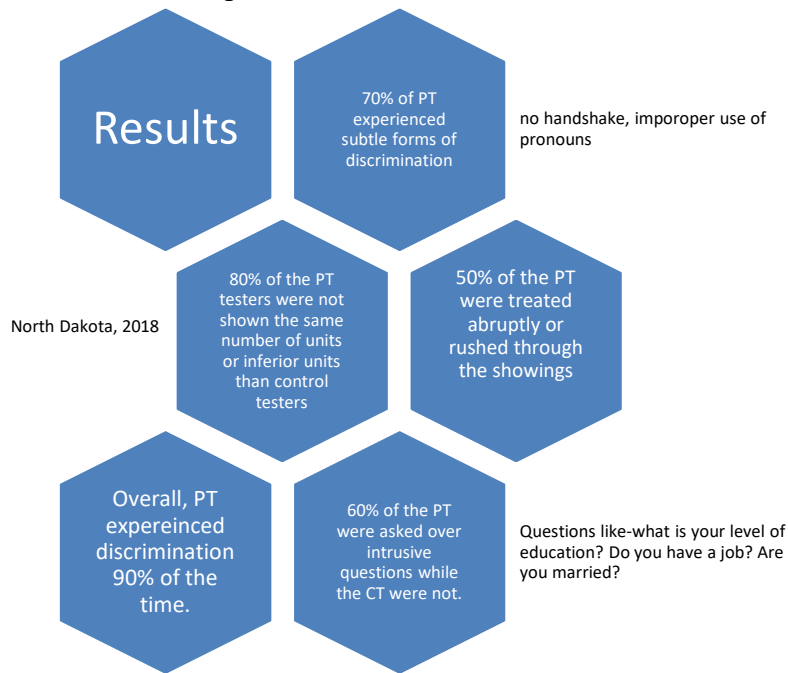
**Walsh and Nance v. Friendship Village**

A federal lawsuit in the Eastern District of Missouri against St. Louis senior housing community Friendship Village Sunset Hills. The complaint alleges that Friendship Village violated the federal Fair Housing Act and Missouri Human Rights Act by discriminating against Walsh and Nance on the basis of sex, denying them a unit because they are a same-sex married couple. Friendship Village told Mary and Bev that it would not accept them because it followed the "Biblical definition" of marriage and "defined marriage as between a man and a woman." Friendship Village is not affiliated with or operated by any religion or religious order; it is open to the public and does not inquire about the religious beliefs or affiliations of residents. Mary and Bev considered seeking housing elsewhere, but Friendship Village is the only senior housing community in St. Louis that can provide increased levels of care without an increased monthly cost to residents. (<http://www.nclrights.org/cases-and-policy/cases-and-advocacy/walsh-v-friendship-village-of-south-county/>)

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## North Dakota Study and Results

Methodology: The North Dakota study used match-paired in-person tests to gather data. The testers were transgender or gender non-conforming individuals paired with cisgender individuals. The testing coordinator was a transgender woman who recruited testers and designed, assigned and debriefed the testers after they completed the tests. All testers were trained according to professional testing standards approved by HUD and employed nationwide. The analysis consisted of comparing the treatment of the transgender or gender non-conforming and control testers among a number of indicators. The results of these comparisons are the basis of our results- the results could be described as 1) Evidence of discrimination 2) no evidence of discrimination and 3) inconclusive. The graphic below shows how possibly protected testers (PT) were treated versus the control testers (CT). The results of the study showed that in 90% of the case there was some form of disparate treatment.



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## Findings

Matched paired tests were completed in Grand Forks, Fargo, Valley City and Jamestown. There were 15 matched pair tests (30 test parts).

Overall, 70% of the trans/gender non-conforming testers experienced subtle forms of discrimination; no eye contact, no hand shake, refusal to use proper pronoun even after the tester informed property manager of preferred pronoun.

Additionally, 80% of the trans/gender non-conforming testers experienced discrimination by not being shown the same number of units or showing them inferior units.

Other instances of discrimination; such as rushing through the showings, not providing detailed information or being abrupt occurred in 50% of the cases for the trans/gender non-conforming testers.

Finally, in 60% of the cases trans/gender non-conforming testers were asked prying questions that the control testers were not asked such as, “Do you have a job? What is your level of education? Are you married? Do you have kids?”

## Recommendations

Results of this study show transgender and gender non-conforming individuals are experiencing high levels of discrimination. (Higher, in fact, than what we anticipated). This study supports the experiences that members of the transgender community presented at legislative hearings. This study clearly emphasizes that there is a need for policymakers to adopt legislation prohibiting discrimination in housing based upon gender identity in North Dakota.

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<sup>i</sup> cis·gen·der

1. denoting or relating to a person whose sense of personal identity and gender corresponds with their birth sex.