NAR Issue Summaries

Fair Housing / Fair Housing Protections Based on Sexual Orientation and Gender Identity

NAR Committee:

Fair Housing Policy Committee

What is the fundamental issue?

While the federal Fair Housing Act of 1968 does not explicitly include sexual orientation or gender identity as protected classes, the U.S. Supreme Court held in *Bostock v. Clayton County* (2019) that discrimination "on the basis of sex" encompasses discrimination based on sexual orientation and gender identity under the Civil Rights Act of 1964. Every federal court to consider the question has applied that interpretation to the Fair Housing Act, as well.

On his first day in office, President Biden issued an Executive Order ordering all federal agencies to adopt the *Bostock* Interpretation of discrimination "because of sex" to include sexual orientation and gender identity. HUD was the first agency to do so and begin accepting fair housing complaints based on sexual orientation and gender identy.

On January 20, 2025, President Trump revoked the EO issued by President Biden that applied the *Bostock* interpretation across federal agencies. HUD stopped accepting fair housing complaints based on sexual orientation and gender identity. The Trump administration also issued an EO ordering HUD to revoke rules allowing for equal access for transgender persons to HUD programs.

I am a real estate professional. What does this mean for my business?

REALTORS® are ethically committed to providing equal professional service without discrimination based on race, color, religion, sex, familial status, handicap, sexual orientation, gender identity or national origin. Discrimination in the transaction limits the property rights of sellers and buyers and the ability of the REALTOR® to conduct business. The Fair Housing Act has provided a level playing field that protects housing providers and consumers from the adverse impacts of discrimination based on race, color, religion, sex, familial status and national origin.

NAR Policy:

In 2009 and in 2013, REALTORS® adopted policy affirming that the right to buy or rent housing of choice should not be abridged due to a homeseeker's sexual orientation or gender identity. Our commitment to equal housing opportunity is enshrined in NAR's Code of Ethics, which commits REALTORS® to provide equal professional service to all without regard to sexual orientation or gender identity, in addition to the other prohibited bases for discrimination under the Fair Housing Act.

Opposition Arguments:

Some lawmakers are opposed to expanding the protections under the Fair Housing Act.

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Legislative/Regulatory Status/Outlook

At the federal level, NAR supports the Equality Act and the Fair and Equal Housing Act. Both would provide clear and consistent non-discrimination protections for LGBTQ+ people in housing by adding "sexual orientation" and "gender identity" as protected characteristics under the Fair Housing Act. Twenty-three states plus Washington, D.C., Guam, and Puerto Rico outlaw discrimination based on sexual orientation. Twenty-two states plus Washington, D.C., outlaw discrimination based on gender identity or expression. Eighteen states and four territories have no explicit prohibitions for discrimination based on sexual orientation or gender identity in state law.

Current Legislation/Regulation (bill number or regulation)

Fair and Equal Housing Act

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