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## Despite the Law's Original Intent, Not All Groups Are Covered by the Fair Housing Act

As he signed the Fair Housing Act into law in April 1968, President Lyndon B. Johnson explained the significance of the new law and the changes it sought to bring. "It proclaims that fair housing for all -- all human beings who live in this country -- is now a part of the American way of life," he declared.

Despite President Johnson's words, the Fair Housing Act does not in fact apply to "all human beings who live in this country," although steps have been taken to bring it closer to that point. Since its passage 50 years ago, the Act has expanded from its initial four protected classes to seven. Race, color, religion, and national origin were included in the original 1968 version. Gender was added as a protective class in 1974, and disability and familial status were included in 1988.

A major group of people not currently covered under the Fair Housing Act is the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) community, a group which comprises at least 6-7 percent of the U.S. population, according to various surveys. Under present law, LGBTQ people can and do face discrimination, legally, when they want to purchase a home, rent an apartment, or apply for a mortgage loan. A [2013 study](#) prepared for the U.S. Department of Housing and Urban Development (HUD) found that housing discrimination against gay

and lesbian couples was comparable to that faced by black and Hispanic households.

Although federal fair housing protection is largely unavailable to LGBTQ consumers, many states do have their own protections in place. In 1973, the District of Columbia enacted a measure to prevent housing discrimination based on sexual orientation, part of the city's groundbreaking laws known originally as Title 34, and later as its Human Rights Act. Gender identity was added to the law in 2006.

Nearly a decade later, in 1982, Wisconsin became the first state in the nation to make housing discrimination based on sexual orientation illegal under its fair housing laws, followed by Vermont in 1992 and Minnesota in 1993. Overall, [22 states, plus the District of Columbia](#), have non-discrimination laws in place to protect LGBT people from being unfairly evicted, denied housing, or refused the ability to rent or buy housing on the basis of sexual orientation, according to the Movement Advancement Project, an independent think tank. Twenty of those states, plus D.C., also include protections based on gender identity.

Twenty-eight states, however, have no laws in place to prevent housing discrimination against the LGBT community. In the majority of states, therefore, LGBT consumers who face unfair housing practices have virtually no recourse under state or federal

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laws. Three states – Arkansas, Tennessee, and North Carolina – even have enacted laws preventing the passage or enforcement of local non-discrimination laws.

In 1974, the National Association of REALTORS® rewrote its Code of Ethics, adding Article 10 to mirror the intent of the Fair Housing Act and its protected classes. In 2010, Article 10 was amended to prevent discrimination against colleagues or consumers on the basis of sexual orientation, and gender identity was added in 2013. Since all REALTORS® subscribe to the Code of Ethics as a condition of membership, Article 10 acts as a supplement to fair housing protections where they are available, and provides guidance to transactions where such laws do not exist.

At the time of the 2010 amendment, NAR General Counsel Laurie Janik said that its passage would put the association ahead of the curve. “We know we will be ahead of Congress if we enact this,” she said.

So far, the REALTOR® organization has remained ahead of Congress on fair housing protections for the LGBTQ community. At the federal level, however, there has been some movement to include sexual orientation and gender identity among the protected classes covered under the Fair Housing Act. As early as 1977, HUD enacted a policy to prevent discrimination based on sexual orientation in public housing. In the current session of Congress, bills have been introduced in both the House and Senate that would add sexual orientation and gender identity as protected classes under the Fair Housing Act.

In 2017, a federal court ruled for the first time that LGBTQ couples are covered under the Fair Housing Act. [The case](#) involved a female couple, one of whom was transgender, that was denied access to rental housing by a landlord in Colorado. The U.S. District Court in Denver ruled in favor of the couple, stating that the landlord had violated the Fair Housing Act by discriminating against the couple based on their sex. Although the ruling applied to this one case, it is not clear if the courts will apply it to others. NAR is seeking legislation amending the Fair Housing Act to apply to discrimination based on sexual orientation and gender identity.

For more information, resources and to get involved, visit [www.FairHousing.realtor](http://www.FairHousing.realtor)