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 For California Relay Service TTY: (800) 735-2929
A nonprofit organization protecting and advancing the legal rights of people with mental disabilities.



***FAIR HOUSING:
IT'S THE LAW!***

Fair Housing Tip of the Month – July 2021

Fair Housing Protections for Transgender Individuals in Homeless Shelters

TENANT: “I am a transgender woman experiencing homelessness. I recently went to a homeless shelter that has separate facilities for men and women. When I handed in my intake paperwork and they saw that I indicated my gender as female, the intake worker looked at me skeptically and told me that since I ‘look more like a man’ I had to be housed in the men’s facility. I tried to explain that I would not feel safe in the men’s facility, and said I believed I had a right to be housed with the women. I was told that I had no such right and that even if I did, temporary housing providers like homeless shelters don’t have to follow fair housing laws. Are homeless shelters subject to fair housing laws, and do I have a right to be housed in the facility that matches my gender identity?”

The law says: Fair housing laws are applied very broadly to nearly everyone who touches housing in any way. Homeless shelters and other temporary or transitional housing facilities are absolutely subject to both federal and state fair housing laws, and are prohibited from discriminating against people based on their gender identity.

Both federal and California fair housing laws recognize that transgender individuals have a right to be housed in facilities that conform to their gender identity, and that failure to do so is disrespectful and can be dangerous to those individuals. If the shelter receives federal funding, it must comply with federal law. In 2020, the previous administration proposed a rule that would have allowed homeless shelters to place transgender and gender non-conforming people in single-sex facilities that did not align with those individuals’ gender identities. However, in April of 2021, the U.S. Department of Housing and Urban Development (HUD) withdrew this proposed rule and released guidance making it clear that everyone is entitled to equal access to housing, shelters, and services regardless of gender identity. Therefore, under current federal law, a shelter that receives federal funds must allow transgender individuals to dress, be housed, and use restrooms in ways that conform with their gender identity.

Moreover, California fair housing law clearly prohibits discrimination in homeless shelters based on gender identity and expression. You cannot be forced to be housed with or use restrooms with members of your birth gender, nor can you be forced to dress in conformity with your birth gender. It is also important to note that California does not have a religious exemption for discrimination in housing or public accommodations. This means that even if the homeless shelter where you are trying to stay is religion-based, they cannot force you to be housed in a facility or behave in a way that does not conform with your gender identity.

What to do: If you feel safe doing so, you can assert your rights yourself to the shelter. Be firm and clear that both federal and state fair housing laws entitle you to be housed in facilities that conform to your gender identity and that homeless shelters are subject to these laws. If this does not work, or if you do not feel safe asserting your rights on your own, you can contact a local legal aid organization that practices housing law to find a lawyer who can help you. You can also report the shelter to a fair housing agency. You may wish to file a fair housing complaint with HUD or, if the shelter is in California, you can also file a complaint with the California Department of Fair Employment and Housing (DFEH).

To file a complaint with HUD, call 800-669-9777, or visit www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process



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To file a complaint with DFEH, call 800-884-1684, or visit www.dfeh.ca.gov/complaint-process/file-a-complaint/

Fair housing laws prohibit discrimination in housing based on the following characteristics: race, religion, national origin, color, sex, familial status,* ancestry,* sexual orientation,* gender identity,* gender expression,* genetic information,* and source of income.*

*Covered under California law, but not federal law. (For most housing, California laws also prohibit discrimination on the basis of citizenship, immigration status and primary language.)

Disclaimer: The Fair Housing Tip of the Month is for educational purposes only and does not constitute legal advice. If you have a legal question, please contact MHAS, your local fair housing council or another attorney of your choice.

The Fair Housing Tip of the Month campaign is based on work supported by the Department of Housing and Urban Development (HUD) under FHIP Grant #FEOI1900435. Any opinion, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of HUD.