



## **POLICY BRIEF: Combating Trans Housing Discrimination in New York City**

### **INTRODUCTION**

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As the birthplace of the modern lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights movement, New York City has long been a leader in the fight for equality and acceptance. Transgender and gender non-conforming (TGNC) individuals have been a driving force in the movement since its inception, but they have not always shared in its victories. In recent years, that dynamic has finally started to shift. From issuing new guidelines supporting transgender students in our schools, to protecting the dignity of transgender individuals in the workplace, to affirming the right of transgender individuals to access public facilities and accommodations consistent with their gender identity, New York City has made significant progress extending equality, protections, and justice to all New Yorkers. These steps have sent a strong message of acceptance and inclusion, but there are still many challenges facing TGNC individuals that must be addressed.

Among the most critical challenges facing the TGNC community today is the lack of access to affordable and stable housing. This problem is familiar to many New Yorkers, yet TGNC individuals must often overcome discrimination, harassment, and fraud in addition to other challenges. A recent survey found that 20 percent of TGNC New Yorkers have been refused a home based on gender identity discrimination.<sup>i</sup> Enforcing the existing laws, as well as expanding services and protections to prevent discrimination, are essential next steps to ensuring that transgender and gender non-conforming New Yorkers have access to safe and stable housing in our city.

### **THE IMPORTANCE OF HOUSING**

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The LGBTQ and TGNC communities have struggled with housing security for years. A lack of acceptance from families, harassment from neighbors, and discrimination in employment all contribute to the challenge TGNC individuals face in housing. Even compared with lesbian, gay, and bisexual non-transgender individuals, transgender New Yorkers are more than twice as likely to have experienced homelessness at some point in their lives.<sup>ii</sup>

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Beyond our legal and moral obligation to ensure housing for all New Yorkers, we know that housing can be the key to a better life. Housing provides stability and creates a safe space. For many, stable housing makes it easier to find full time work and receive other benefits. Whether an individual is looking for a place to call home, or a family is seeking a safe environment to raise children, finding housing is important at every stage in a person's life. For these reasons, and many more, reducing the barriers TGNC individuals face finding housing is a major step toward creating an inclusive, accepting society.

## TYPES OF DISCRIMINATION

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New York City law is clear. A landlord or broker cannot refuse to offer a lease, charge more, ask for additional fees, offer different amenities, or refuse repairs based on sexual orientation, gender identity, or gender expression.<sup>iii</sup>

Nonetheless, TGNC individuals, community organizations, and legal groups report that widespread discrimination persists in many forms. At times, the discrimination is direct and clearly based on one's gender identity or expression. Landlords or brokers have reportedly refused to work with transgender clients, and cited concerns about the reaction of the neighbors or community as a reason to deny an applicant service.

Even for those with existing housing, a neighbor or landlord learning of their transgender identity can initiate discrimination. TGNC individuals report neighbors and landlords threatening violence and making lewd comments. When TGNC individuals are members of an immigrant community, brokers and landlords try to take advantage of their precarious situation and illegally pressure them to vacate because of their immigration status. Landlords have reportedly attempted to evict them, refused to help transgender tenants address harassment, and stopped providing services and repairs in order to push these tenants out.

Less direct discrimination is also common, and can be harder to address. Landlords or brokers use evasive tactics to avoid serving transgender applicants, such as reporting that no apartments are available, when in fact there are, or denying the application on another basis. It has been reported that commonly, brokers and landlords say they do not accept government benefits, such as Section 8 or HASA subsidies. Source of

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income discrimination is illegal, but many individuals (and too many brokers and landlords) are not aware of these rights. Even when the discrimination is voiced indirectly, the result is the same: denied housing is denied opportunity.

Perhaps most concerning, TGNC individuals report many instances of brokers using the perceived gender identity or expression of an applicant as an opportunity to commit fraud. Bad actors request upfront fees from applicants, saying it is required to start the process of looking for an apartment, with no guarantee of success. Transgender individuals report being told that this fee covers the ‘extra effort’ required to find an apartment willing to admit a TGNC resident. These are extra fees based on gender identity and are illegal. Other forms of fraud include accepting payment for an apartment, then disappearing without providing keys, or attempting to convince someone who has paid for an apartment to accept a different space than the one they were shown.

Legal agencies and community groups report cases of TGNC individuals who have experienced all of the following forms of discrimination:

1. Direct
  - a. Explicitly denying housing rental or purchase because the actual or perceived gender identity or expression of the applicant
  - b. Landlords intimidating or neighbors threatening the safety of existing TGNC residents. Common forms include slurs, threats of violence, references to immigration status, or requests/expectations of sexual favors
2. Indirect
  - a. Using other forms of discrimination as cover to reject TGNC individuals, including refusing to accept HASA or Section 8 vouchers
  - b. Making indirect statements to avoid providing services to TGNC applicants, such as saying “there are no apartments available today,” when the opposite is true
3. Fraud
  - a. Requesting excessive fees to find an apartment on the basis of the applicant’s gender identity or expression
  - b. Accepting payment for an apartment, then disappearing without providing the service

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## **BARRIERS TO REPORTING INCIDENTS, ACHIEVING RESULTS**

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When the law is violated, it can be hard for vulnerable communities to seek assistance. Barriers to reporting - such as time, money, effort, and a lack of trust in the system - often prevent those who have been discriminated against from seeking support from the City. Especially for those with tenuous living situations, the demands of daily life make it difficult to address the added burden of finding TGNC-friendly housing.

The New York City Commission on Human Rights (the Commission) does significant outreach to connect vulnerable communities with resources for holding bad landlords accountable. But too many LGBTQ and TGNC New Yorkers still have trouble reaching these services. Victims of discrimination can report incidents to the Commission online, but in order to initiate City action, the complainant must make an in-person appointment to evaluate their options. Currently, these appointments can only be made at the Commission's Manhattan office, and there is a significant wait for timeslots, averaging five weeks. For residents of outer boroughs the time, cost, and comfort levels required to go to this office can be significant deterrents to filing a complaint. Once complaints have been filed, the average length of time until cases are resolved was 536 days in 2016.<sup>iv</sup> For many in need of swift solutions, this path does not address their needs.

A history of societal discrimination and decades of bad outcomes from government institutions has left the TGNC community with distrust in the system. Although the City has increased its efforts to protect and defend TGNC individuals, these efforts have yet to fully overcome the wariness felt by the TGNC community. The Commission should continue to work closely with community organizations serving TGNC populations to rebuild this trust. These organizations hear stories and complaints directly, and more frequently. Creating a formal system in which these organizations can share reports with the Commission would facilitate stronger data collection and increase opportunities for the agencies to take action, thus strengthening enforcement of the laws that are intended to help TGNC individuals avoid discrimination.

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## **BARRIERS TO FAIR HOUSING WITHIN THE GOVERNMENT SYSTEM**

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There are significant barriers for TGNC individuals to getting assistance and results within government institutions. For instance, many TGNC individuals spend time in City homeless shelters but are not informed of the anti-discrimination protections and what they can do to protect themselves and enforce their rights. There are also issues for those who seek redress in court: judges with limited familiarity with the Human Rights Laws and TGNC protections. Taken together, these issues often leave TGNC individuals feeling as if they have no recourse. Discriminatory interactions can be better avoided and remedied by providing training on TGNC discrimination and legal protections for NYC Department of Homeless Services (DHS) employees and contractors in order to better assist individuals moving out of shelters. Additionally, reports suggest significant benefits to providing continuing education to judges on the New York City Human Rights Law.

## **INCREASING UNDERCOVER TESTING AND IMPROVING DATA CATEGORIZATION AND CASE LAW SHARING**

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Key to the Commission improving outcomes is addressing discrimination through the use of “testers”, or undercover investigative teams, when investigating complaints. After a complaint is filed, testers can verify transphobic behavior from landlords or brokers by attempting to recreate the scenario, and by recording or documenting that interaction so that the evidence can be used in court to prove discrimination. In 2016, the Commission performed 47 tests investigating housing discrimination based on gender identity, yielding 22 confirmed incidents.<sup>v</sup> This is a significant increase in testing over previous years, and must continue. Increasing the use of transgender testers will demonstrate that the Commission is serious about addressing TGNC discrimination and will help more individuals.

In addition, in order to better reflect the scope of TGNC discrimination and provide legal practitioners with information on case law, the Commission should create a database of successful TGNC discrimination court cases. This information can be shared by private attorneys and not-for-profit organizations and compiled by the Commission into a useful resource.

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## THE FACES OF DISCRIMINATION

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**Margot:** For TGNC New Yorkers, blunt, insulting statements from landlords and brokers are all too familiar. Statements like, “the neighbors would never accept you,” “you’re probably a prostitute,” or “you are a risk to the other residents.” These comments are discriminatory, and they are illegal. Margot is one of countless transgender women who has endured these comments when trying to find a new apartment. Last fall, a broker told her directly that because she is transgender, he would never be able to find her an apartment.

**Cecilia:** Sometimes discrimination is less overt, but just as insidious. Take the case of Cecilia and her boyfriend, who were ready to move in together. They both had good jobs, with decent pay and steady income. To find their new apartment, Cecilia followed the same process as most New Yorkers. She and her boyfriend found a listing, spoke with the broker on the phone, and arranged to see the apartment the next day. The day of the viewing, her boyfriend, a cisgender man, arrived at the meeting spot first. He met the broker and they talked about the neighborhood until Cecilia arrived. As soon as Cecilia walked up and the broker could see (or assume) she was transgender, the tone shifted. The broker said that he couldn’t remember which apartment they were supposed to see, and wouldn’t be able to show them any locations that day. Without saying it explicitly, his message was clear: transgender residents were not welcomed.

**Jessica:** When members of the immigrant community look for apartments, there are many ways that brokers and landlords try to take advantage of their precarious situations. As a trans-Latina woman, Jessica had even greater barriers placed in front of her. After several brokers refused to work with her, Jessica found one who was willing to help her find an apartment. The broker had one condition – Jessica had to pay three months of rent in advance to help find her an apartment. She was told that this would pay for the broker to find three possible apartments for her – if she didn’t like the apartments, or the landlords decided they didn’t want her (for any reason), she would forfeit her money, and still have no apartment. This fraud is common in many communities, and those already targeted for discrimination, and with fewer resources to fight back, are especially vulnerable to these types of fraud. Jessica decided she could not risk losing her savings, so refused the deal, and has still not found an apartment.

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These three cases, one overt, one unspoken, and one exploiting a vulnerable community through fraud, share two things in common: a transgender individual was denied an apartment and none sought official recourse. As a City, we must do more to reach out to these victims and give them as many avenues as possible to seek justice in the face of discrimination. This means making it easier to file complaints, giving them additional avenues beyond filing, educating people along the continuum of contact and further discouraging discriminatory practices.

## RECOMMENDATIONS

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The Office of the Public Advocate makes the following recommendations to improve protections for transgender and other marginalized groups:

- **Establish the ability for the Human Rights Commission to receive and file complaints at all outer borough offices**
  - Currently, the Commission cannot accept formal discrimination complaints at its outer borough field offices. Personnel qualified to take in cases should be placed at all field offices to provide easier access to the Commission's services. This may require additional funding for the Commission to staff an expanded intake program.
- **Offer community based organizations small grants to compile discrimination complaints**
  - Leading LGBTQ legal and housing non-profits can advise and direct the Commission to investigate claims of discrimination. Often, TGNC individuals feel more comfortable reporting discrimination to known community organizations. By compiling complaints and identifying repeat offenders, advocates can share the knowledge and experiences of their clients with the Commission to inform city efforts to reduce discrimination. The Commission's testers can then be directed to investigate known repeat offenders.

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- **Provide additional Training for Department of Homeless Services workers and judges**
  - Discriminatory interactions can be better avoided and remedied by providing additional training at the front and back ends. Before searching for housing on the private market, many TGNC individuals find themselves in the shelter system. The DHS shelter transition employees should receive training in TGNC discrimination in order to better assist individuals moving out of shelters. Additionally, anecdotal evidence suggests that, for instances of discrimination brought to court rather than to the Commission, it would be helpful if there were continuing education provided to judges on the New York City Human Rights Law.
- **Provide individuals with a form letter from the Human Rights Commission outlining the discrimination law upon request**
  - In many instances, a landlord or broker might be deterred from discriminatory action by an official letter laying out the Human Rights law and penalties for violations. The letter would not need to refer to a specific incident, only lay out the law. This could potentially deter or correct discrimination before it happens.
- **The Human Rights Commission should increase the use of transgender “testers” to confirm bad actors and hold them accountable**
  - In order to increase the responsiveness and success of the Commission, the ability to dispatch transgender testers to establish a pattern of discrimination is necessary. Brokers and landlords are often repeat offenders, and targeting the worst actors could dissuade others from engaging in discriminatory behavior.
- **The Human Rights Commission should create a repository of information for TGNC court cases**
  - In order to better reflect the scope of TGNC discrimination and provide legal practitioners with information on case law, the Commission should create a database of successful TGNC discrimination court cases. This information can be shared by private attorneys and not-for-profit organizations and compiled by the Commission into a useful resource.

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## CONCLUSION

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Supporting and defending TGNC New Yorkers is a critical part of creating a just, accepting city. The barriers faced by the TGNC community are shared by countless other communities, such as immigrants and those on public assistance, and the solutions will yield benefits for all. As New York City works to ensure that TGNC individuals have equal rights and opportunities in all aspects of their lives, taking steps to end housing discrimination is a key part of this goal. By standing with the TGNC community, we create a stronger city and a more accepting environment for all.

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<sup>i</sup> [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_state/ntds\\_state\\_ny.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_state/ntds_state_ny.pdf)

<sup>ii</sup> [https://gaycenter.org/file/docs/network/TGGNC-health-and-economic-insecurity-report-FINAL\\_rebranded-May-9.pdf](https://gaycenter.org/file/docs/network/TGGNC-health-and-economic-insecurity-report-FINAL_rebranded-May-9.pdf)

<sup>iii</sup> <http://www1.nyc.gov/site/fairhousing/renters/rights-and-responsibilities.page>

<sup>iv</sup> <http://www1.nyc.gov/assets/cchr/downloads/pdf/publications/AnnualReport2016FINAL.pdf>, page 22

<sup>v</sup> <http://www1.nyc.gov/assets/cchr/downloads/pdf/publications/AnnualReport2016FINAL.pdf>, page 21

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