

# INSIGHT

Western New York's Source for Fair Housing News

VOLUME 43 NO. 3

HOUSING OPPORTUNITIES MADE EQUAL 700 Main Street Buffalo NY 14202

Fall 2006

## Cazenovia Recovery Wins Approval For Affordable Housing

By Scott W. Gehl

After a half year of discrimination and delay, on July 11, 2006 the City's of Buffalo approved plans by a respected human service provider to develop 24 units of affordable housing near Main and Amherst Streets in Buffalo. The controversy generated by this proposal to turn two largely vacant factory buildings into attractive affordable housing revived the exclusionary impulse which had given rise to the Restricted Use Permit Ordinance more than a decade ago. (This was the subject of an article entitled "Segregating the Poor and Disabled" by attorney William Berry published in the last issue of Insight.)

### Because of their clients

Cazenovia Recovery Systems Inc. is a non-profit agency which, for 30 years, has been a provider of services to persons recovering from addiction, mental illness and homelessness. Cazenovia operates 11 residential sites in Buffalo, West Seneca, Lackawanna, and Eden as well outpatient counseling facilities.

The Central Park Commons project was to be a new venture for Cazenovia Recovery Systems, which proposed to take the old Cranz Rubber Factory buildings at 2665 and 2671 Main Street and turn them into one and two

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## You Scratch My Back... RESPONDING TO SEXUAL HARASSMENT

By DeAnna Eason

Although most people are aware that sexual harassment happens in the workplace, many do not realize the frequency with which harassment, as in the examples given see box right, occurs in housing situations. Housing Opportunities Made Equal is currently in the process of investigating two cases where landlords have denied housing or housing related services because of a tenant's refusal to respond to sexual advances.

In 1974, the Fair Housing Act (FHA) of 1968 was amended to include gender as a protected class. This addition meant that discrimination on the basis of sex was prohibited in the sale or rental of housing.

Sexual harassment in housing is considered to be a form of discrimination that is based on a person's sex. It may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Even if a tenant has in the past engaged in sexual activity with the landlord

*"My landlord stopped making repairs in my apartment because I refused to have sex with him."*

*"The apartment manager told me he would not evict me because my rent is late if I let him take pictures of me naked."*

*"I don't know if he means anything by it, but the maintenance man always seems to show up to make repairs when I'm in the shower."*

or his representatives to pay the rent or to get repairs made, she is not obligated to continue these arrangements. She is considered to be a victim of sexual harassment if she refuses further demands for sexual contact.

The first case to apply the FHA to sexual harassment in housing was *Shellhammer v. Lewellan* (6th cir. 1985). Mrs. Shellhammer's landlord offered her money to pose for nude pictures and to have sex with him. Although Shellhammer did not have the rent money, she refused the landlord's offer and she and her husband were

subsequently evicted. The court found that while the landlord had a legal right to evict for non-payment, the family was evicted in part due to Mrs. Shellhammer's refusal to have sexual contact with the landlord.

There are two categories of sexual harassment that the courts find actionable: quid pro quo, and hostile living environment.

Quid pro quo harassment occurs when sexual favors are sought in exchange for housing

and or housing related benefits. A hostile living environment is identified by unsolicited sexual conduct that creates an intimidating, hostile or abusive housing environment or has the effect of unreasonably interfering with a tenant's housing.

Housing providers who sexually harass most often prey on victims who desperately need the housing that is being threatened.

While it is no respecter of person, the majority of victims

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## Discrimination in Cyberspace?

By Andrea Mujahid-Moore

When was the last time you read a housing advertisement that contained discriminatory language? It is rare in Western New York due, in large part, to the efforts of HOME and the 27 local publishers who in 1984 ne-



gotiated a voluntary agreement which virtually eliminated the use of discriminatory language in printed classified housing advertisements. Since that time the number of Western New York publishers who have volunteered to police their advertisements has grown to more than 50. Recently, though, HOME staff monitoring housing advertisements on the internet found a number of ads containing discriminatory language. One of the most blatant,

"no children", was found on the buffalo.craigslist.com website.

The Fair Housing Act of 1968 as amended prohibits the use of discriminatory language in housing advertising in printed publications. Nor can advertisements for housing contain any words that might imply a preference or a limitation for one type of person over another, no matter how subtle that wording is. Rigorous enforcement of the Act has deterred many publishers from

(Continued on page 4)

## From the Director: A SEASON OF CHANGE

By Scott W. Gehl

It seems that one of the constants at HOME is change—and this past summer has been a season of change.

Lacking real estate or a substantial endowment, HOME's principal assets have always been its good name and human resources. While the good name is secure, our human resources have taken a big hit.

In the early years of the Greater Buffalo Community Housing Center, HOME had a professional staff of 14. Nevertheless, it was rare to have more than one position in transition at time. In the summer of 2006—with a staff only half as large—HOME found itself quite unexpectedly with three positions simultaneously vacant. Senior Counselor Lisa M. Cruz, Data Specialist Kya Cooley and Coordinator of Development Shannon M. Koehn have left our staff. All were highly valued contributors.

Kya's was the friendly helpful voice which guided clients when they first called HOME (and saved them the maddening experience of contending with a flawed voicemail system.) Lisa, who had done a previous tour of duty as a mobility counselor, returned in the autumn of 2005 in the role of senior counselor—providing sound advice to discrimination victims, tenants and landlords in both English and Spanish.

Shannon came to HOME in September of 2003, accepting the unenviable task of raising funds for civil rights while at the same time overseeing several administrative functions. As HOME fell victim to funding cuts, the support staff Shannon had once supervised shrank and then disappeared. And Shannon became a "renaissance woman", taking on bookkeeping functions and in-house tech support previously provided by people she had supervised.

### In their place

Despite an aggressive hiring process (fueled by the burden of doing the work of others), all told between July 6th and August 28th HOME was short staffed 87 work days due to these three vacancies. In the interim DeAnna Eason, Ken Gholson, Anne Huiner, Andrea Mujahid-Moore and Law Intern Alexander Karsten put forth an extraordinary effort to make certain our clients were served and HOME's obligations met.

Beginning in mid-August three new staff came on board. Senior Counselor Frank Corrie, who is also bilingual, worked most recently as a vocational counselor at Horizon Health. Part-time Bookkeeper-Administrative Assistant Tanika M. Hubbard has worked with Erie County and New Era Cap.

On August 28th, the especially challenging position of Coordinator of Development & Administration was filled by Kristen L. Segebarth, an attorney who has done good work for Everywoman Opportunity Center, the YMCA and UB's Department of Family Medicine.

### A looming challenge

Although HOME looks forward to the contributions to be made by our new staff,

we note that one significant factor in the loss of dedicated staff has been our failure to pay competitive salaries. It isn't enough that we ask people to work in a stressful situation confronting some of the worst inhumanity one can imagine; we have also expected people to take a vow of near poverty for the privilege.

Accordingly, at its August meeting HOME's Board of Directors accepted a recommendation to upgrade salaries of several incumbent staff—despite a budget which is still in deficit. That upgrade is just a first step.

If fair housing and HOME are worth keeping, we must find a way to pay for them.

**LEAVE A LEGACY ...** HOUSING OPPORTUNITIES MADE EQUAL EXISTS BECAUSE OF THE CONTINUING SUPPORT OF OUR MEMBERS WHO DESIRE TO LIVE IN A COMMUNITY FREE OF DISCRIMINATION. FOR ALL THOSE WHO SHARE THIS BELIEF, THERE IS ANOTHER WAY TO SUPPORT HOME'S MISSION – BY LEAVING A LEGACY TO HOME. FOR INFORMATION ON A MAKING A PLANNED GIFT TO HOME'S JOHN HOWLAND KOEKKOEK ENDOWMENT FOR FAIR HOUSING EDUCATION, CONTACT KRISTIN L. SEGEBARTH AT 854-1400 EXT. 17 OR [KSEGEBARTH@HOMENY.ORG](mailto:ksegebarth@homeny.org)

## YOU ARE THE FUTURE OF CIVIL RIGHTS! Become a HOME member today!

- \_\_\_\_\_ Student/limited income.....\$10
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- \_\_\_\_\_ Family membership .....\$40
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- \_\_\_\_\_ Patron .....\$100
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700 Main Street  
Buffalo NY 14201

Ask about our organization and corporate membership packages!  
For more information: 854-1400 ext. 17 or [www.homeny.org](http://www.homeny.org)

### I WANT TO LEAVE A LEGACY OF CIVIL RIGHTS SUPPORT

- \_\_\_\_\_ I've include HOME in my estate plan
- \_\_\_\_\_ Please send information on how I can include HOME in my estate plan

## Trans-forming Civil Rights

By Anne Huiner

On or around November 20th, transgender activists and their allies will gather in cities throughout the county and the world to participate in the 8th annual Transgender Day of Remembrance. According to the Day of Remembrance website ([www.gender.org/remember/day](http://www.gender.org/remember/day)) the day has been set aside to “publicly mourn and honor those who were killed due to anti-transgender hatred...raise public awareness of [these] hate crimes..., and express love and respect for transgender people.”

According to this website, over the last decade about one transgender person a month has died due to hate-related violence. Most of the murders have never been solved. While there is a need to publicize those facts and give support to families and friends, there is also a need to address the ongoing social and political conditions such as economic justice and legalized discrimination that make these statistics possible.

**“We don’t just need to be mourning the dead. We need to be asking questions about who is dying and why...”**

As transgender activist Eugene Stratton\* stated: “We don’t just need to be mourning the dead. We need to be asking questions about who is dying and why... It’s mostly poor transgender women of color.” As in many other forms of discrimination, problems are exacerbated by the fact that low-income people already have more limited choices.

He explains “It gets messy because all the issues are related. Someone that feels threatened in school whose parents can’t afford to send them somewhere they will feel safe will drop out. Dropping out of school virtually guarantees that a person will only be eligible for the lowest paying jobs. Combine that with job discrimination (not illegal under NY State law) and transgender people tend to be poor. The combination of low income and legal housing discrimination can lead to homelessness.”

Because most of the shelter system provides separate housing based on gender, transgender individuals have either been refused shelter or offered housing that

is inappropriate to their gender. According to a report published by the National Gay and Lesbian Task Force, *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People*, “Most homeless shelters and shelter systems in the United States are segregated by sex....As a result, transgender youth and adults who identify or express a gender different from birth sex can experience extreme difficulty in obtaining adequate and safe shelter.”

People who have been denied access to education, traditional employment, medical care and shelter are the ones forced to survive in dangerous situations where the threat of violence is more prevalent to begin with. And so these who gather once a year to remember those who died, also need to consider Mr. Stratton’s question, “What about the other 364 days a year? I don’t have rights 365 days a year.”

### Background and betrayal

Some civil rights activists suggest that one step in the rights direction would be to add the phrase “gender identity and expression” to the New York State Human Rights law. This bill, called GENDA (the Gender Expression Non Discrimination Act) would give transgender individuals meaningful recourse against discrimination in housing, public accommodations and employment.

In December of 2002, after over 30 years of effort, the Sexual Orientation Non-Discrimination Act (SONDA) was passed. The victory was marked by elation for some, but for others, the victory was tinged with a deep sense of disappointment. They felt betrayed at what they viewed as political maneuvering to get SONDA passed. One of the most contentious strategies was to eliminate protections on the basis of gender identity because the State Senate would not support them.

In a meeting with Empire State Pride Agenda (ESPA) President Matt Foreman, Senate Majority Leader Joseph L. Bruno reportedly stated that he would support a bill that included only “heterosexuality, homosexuality, bisexuality, or asexuality.” Supporting EPSA’s move to delay transgender rights, Jonathan Capehart, then the NY Daily News deputy editorial page editor stated “Let’s be honest: transgender issues are dif-

**“What about the other 364 days a year? I don’t have rights 365 days a year.”**



ficult for most people to understand.”

While it may be true that there is a relative lack of understanding about gender identity issues, it has often been the case that advances in civil rights laws precede changes in public perception of a particular group. Legislation is, after all created primarily to change behavior, not attitudes. If civil rights leaders fighting for racial justice had waited for acceptance of the idea of equal treatment without regard to skin color, we might still be waiting for the Civil Rights Act to be passed. This is evidenced by the fact that there is still a need for HOME and other civil rights organizations to enforce civil rights laws.

Like the Civil Rights Act or SONDA, GENDA is not a bill asking for preferential treatment. It is about granting a currently excluded portion of our community the rights that most of us take for granted. And if these rights are denied, it is about knowing that these members of our community are not entirely without legal recourse.

### Civil rights begin at HOME/home

Just as protection from housing discrimination on the basis of sexual orientation was part of HOME’s mission statement long before SONDA passed, HOME’s mission statement has for some time included gender identity and expression. Buffalo’s own Fair Housing Ordinance also adds limited protections on the basis of gender identity and expression as well as lawful source of income.

Ironically, two council members who opposed the Buffalo ordinance sponsored a resolution to “send a message to Albany” to amend the Human Rights Law to include gender identity and expression. HOME supports such resolutions, but does not believe memorializations can replace advances in civil rights.

\*not his real name

## YOU SCRATCH MY BACK ...

(Continued from page 1)

in reported instances of sexual harassment in housing are female. Young single mothers are particularly susceptible, especially those who have a nearly impossible time locating affordable and safe housing for their families. A woman with minimal income and limited housing options may feel forced to submit to sexual behavior in order to obtain or maintain a housing unit. She may feel that she is left with little recourse but to endure the



humiliation of sexual harassment or risk becoming homeless.

Sexual harassment in housing may include:

- comments or questions about personal sexual activity or lifestyle
- telling jokes of a sexual nature, making lewd comments, name-calling
- display of sexually suggestive posters, cartoons, calendars, caricatures
- rummaging in private belongings, especially articles of a personal or sexual nature
- walking in rental units unannounced, particularly when attempting to "corner" a person who is alone; and
- forcing unwelcome physical contact.

Sexual harassment in housing may quite possibly be more disturbing than in the workplace because the home is a more vulnerable, less public setting. The housing provider has access to the victim's home thus leaving the victim to cope with feelings of despondency and hopelessness, as if her life was spiraling out of control.

According to the NOW Legal Defense and Education Fund's Legal Resource Kit on Sexual Harassment in Housing, anyone sexually

harassed in their housing is protected by the FHA and any housing provider can be sued if they sexually harass a tenant. Claims for relief may be filed with Department of Housing and Urban Development, federal court, or the Department of Justice.

If you or someone you know believe that you are experiencing sexual harassment in your housing situation please call HOME at 716-854-1400 and ask to speak with a fair housing specialist. Just as a reminder, all calls are kept confidential and no action will be pursued without your signed consent.

**Tenants who believe that their landlords have been sexually inappropriate should know that they:**

- have a legal right to have a chain lock on their door
- should talk to a trusted and close confidant about what they suspect is going on
- need to call the police whenever they feel threatened or in harm's way, and
- have the right to say no!

## DISCRIMINATION IN CYBERSPACE

(Continued from page 1)

using biased language. However there is no such prohibition yet for electronic publications.

The Chicago Lawyers Committee for Civil Rights is challenging the right of craigslist.com, an internet company who acts as a poster board for the public, to post housing advertisements using discriminatory language. After monitoring the popular [chicago.craigslist.com](http://chicago.craigslist.com) for about six months, the committee filed a lawsuit against them. HOME learned of the lawsuit during the course of researching how to respond to the discriminatory ads on the Buffalo site.

The argument and issues surrounding the case is neatly provided in a *New York Times Week in Review* article by Adam Liptak (published March 5, 2006) entitled "The Ads Discriminate, but Does the Web?" A summary follows.

The Chicago lawsuit alleges that ads such as "married couple, or small family", "African Americans and Arabians tend to clash with me so that won't work out", and "I prefer a young Christian male" were posted on the website. If any of these ads appeared in a printed publication the publisher would clearly be liable for violations of the Fair Housing Act. However, it is not as clear that online advertisements violate fair housing laws because the companies that "publish" them are not considered publications; rather, they are considered distributors. Therein lays the

legal issue which will have to be decided by the courts.

Ten years ago, Congress passed the Communications Decency Act of 1996 which said, in part, that online companies are not liable for transmitting unlawful materials supplied by others. Congress at that time intended to nurture the growth of this then new method of mass communication and information sharing. Yet in practice, the Communications Decency Act leaves the people who are protected under the Fair Housing Act virtually unprotected in the largest venue available to the reading public.

Jim Buckmaster, CEO of Craigslist, has stated that [craigslist.com](http://craigslist.com) is not a publisher but rather a community-moderated commons which is run by and for its users who publish and manage their own ads. Buckmaster says that the users themselves monitor the content of the site and that the demands made by the Lawyers Committee that (among other things) [craigslist](http://craigslist.com) monitor its ads to insure compliance with fair housing laws are impractical.

Needless to say, [craigslist.com](http://craigslist.com) is not the only site which carries discriminatory advertisements. There are numerous other websites which allow property owners and realtors to advertise housing, both rental and sales, and are not currently held liable for the contents of the advertisements. In many instances, it is very difficult to find out who actually placed the ad.

The [craigslist](http://craigslist.com) lawsuit has yet to be tried but previous lawsuits against other internet companies have not fared well. For example,

a 2003 case involved an actress whose name and home address was posted with a message that she was looking for a one night stand. Unfortunately for the actress, who was terrorized for months after the ad was posted, the court ruled that "Congress intended that service providers such as ...be afforded immunity from suit."

The debate is far from over. Eugene Volokh, Law Professor at the University of California in Los Angeles said that to impose liability on [Craigslist](http://craigslist.com) would be a terrible idea. He, too, believes that the burdens would be too great and that the impact would devastate the company.

On the other side, there are those who believe that the Internet is no longer a baby in need of social protections to grow. Professor Rodney A. Smolla, Dean of the University of Richmond School of Law and author of *Free Speech in an Open Society*, said, "We understand the potential for harm in Internet communications. We understand child pornography. We've seen the Internet as a tool for terrorism. We've seen the Internet as a libel free fire zone. That will act as a push toward a more measured form of immunity."

As is so often the case, good intentions may backfire and cause much damage to the innocent. Congress created this monster in an attempt to help a new and struggling technology, and no matter how the court decisions come down on the issue it is probable that Congress will have to revisit the issue in the years to come and will likely have the final say.

## CAZENOVIA WINS

(Continued from page 1)

bedroom affordable apartments. Four of the 24 units would be reserved for graduates of Cazenovia. Additionally, the agency would move its administrative offices to the site and provide one-on-one counseling for six to eight clients each day.

In the first months of 2006, Cazenovia met with a host of City officials (including Councilmember Antoine Thompson, in whose district the project would be built), the Northeast Good Neighbors Planning Alliance, and attended two public meetings. While people had questions, those in attendance were generally supportive. Both Councilmember Thompson and the chair of the Northeast Planning Alliance subsequently wrote letters of support. Suzanne L. Bissonette, executive director of Cazenovia Recovery, was optimistic.

Then people from the other side of Main Street—historically Buffalo's great socio-economic divide—weighed in. In the second week of February, the Central Park Homeowners Association distributed a flyer asking residents to attend upcoming meetings of the Planning and Zoning Boards. The flyer stated (in part): "the facility...will include beds for recovering addicts". It continued: "In light of recent crimes committed in Central Park *which statistics show are the type related to drug activity* [emphasis added], we are asking you to go to those meetings and ask for a slowdown in the approval process so that we...can have a proper public meeting at which Cazenovia officials explain the project and respond to questions."

Although the Masten District Councilmember supported the project to be located within his district, then Delaware Councilmember Marc Coppola appeared before the Planning Board and asked that the matter be tabled until public notices were re-mailed by the Zoning Board of Appeals. Indeed a number of residents from more affluent streets west of Main expressed concerns about the project. Having learned of the affordable housing project one prominent resident reportedly asked: "Don't they know some of us have a half-million dollars invested in our homes?"

### Procedural confusion

Despite the sunset of the Restricted Use Permit Ordinance, officials in City Hall seemed to believe that once the Planning Board ruled on the proposed site plan the matter still had to go before the Zoning Board of Appeals. Mindful of how RUPO had been used to block another

human service provider's planned facility nearly ten months after the ordinance expired, HOME and the Inclusion Task Force emphatically said "No further approvals are necessary."

The Commissioner of Licenses and Permits examined the situation and concurred. A March 2nd letter from the Chairman of the Zoning Board of Appeals neighboring residents confirmed that RUPO had expired in June of 2004 and thus the Zoning Board had no jurisdiction.

Proponents of the 1995 restrictive ordinance raised a chorus of objections, wondering why the exclusionary law had been allowed to expire. Subsequently a resolution was introduced into the Common Council by Majority Leader Dominic Bonifacio to "restart" RUPO.

### Bringing parties together

While City Hall sorted out the law, the Office of Strategic Planning scheduled yet another community meeting on March 9th at Parkside Lutheran Church. More than 100 people crowded into the church basement (ironically named "Atonement Hall") to hear a presentation on the proposed development and to ask questions of Cazenovia.

Both the Parkside Community Association and Central Park Homeowners Association made statements opposing the project. Then the floor was thrown open to an hour of questions and comments by the audience.

Some in attendance had questions about Cazenovia's reputation, wondering whether the agency was subject to outside reviews. (It is.) Others questioned the use of public funds to construct "high cost" apartments when vacant rental housing already exists, suggesting that "low-income housing" and "drug addicted tenants" will cause problems for surrounding neighborhoods. Other said Main Street was fast becoming a "social service ghetto". One person asked that the project be tabled until a county-wide study of services and special needs populations can be completed.

However other residents from Parkside and Central Park were considerably more welcoming. One person noted that the blue recycling boxes which lined affluent streets west of Main each garbage day often contained a surprising number of empty wine and liquor bottles; alcoholism is not a problem which does not exist there. Another resident held up a photo of someone who has publicly acknowledged a prior history of substance abuse—asking: "Do we want people like him coming to our

neighborhood?" The picture was of President George W. Bush.

William Parke of the Office of Strategic Planning did an able job of facilitating largely respectful discussion and assuring that all sides were heard

### After the meeting

At the March 9th meeting, Cazenovia CEO Bissonette agreed to follow-up meetings with representatives from the Parkside Community and Central Park Homeowners Associations. New Delaware District Councilmember Michael LoCurto also seemed anxious to facilitate a resolution.

After discussion, the Cazenovia Board of Directors agreed that while the agency's administrative offices would move to Central Park Commons, outpatient counseling offices will remain elsewhere. On July 6th the Planning Board finally approved the project—thanking Cazenovia for its patience, cooperation and diligence, and acknowledging the need for the project.

Despite the amicable resolution of this controversy which prompted it, the Common Council now has a resolution to "restart" the Restrict Use Permit Ordinance on its agenda for September.

## INSIGHT

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**“PRAY FOR THE DEAD AND FIGHT  
LIKE HELL FOR THE LIVING”**

Mother Jones, American Labor Organizer 1830-1930

**The Buffalo Day of Remembrance**

*event will be held*

**November 11, 2006**

**UNITARIAN UNIVERSALIST CHURCH**

695 Elmwood Avenue (entrance on W. Ferry St.)

7:00 p.m. – 8:00 p.m.

*for more information contact:*

**Camille Hopkins 465-1837**

- for more information about GENDA and other transgender issues: [slrp.org](http://slrp.org)
- for local information and support for transgender individuals and allies: Spectrum help line: **1-888-705-8340**

**IF YOU HAVE FACED HOUSING DISCRIMINATION**

**CALL HOME AT 854-1400**

**THANK YOU TO  
ALL OUR PATRONS . . .**

The Town of Amherst, the City of Buffalo, the Erie County CDBG Consortium, the Town of Hamburg, HSBC Bank USA, M&T Bank, the Peter and Elizabeth C. Tower Foundation, and Donor designated contributions made through the State Employees' Federated Appeal, the Combined Federal Campaign and the United Way.

***HOME's Wish List . . .***

Call HOME at 854-1400 to help!

- ◆ Lap top computer and projector for PowerPoint presentations
- ◆ MS Word compatible Spanish language software
- ◆ Shredder

**HOME's Mission:**

Housing Opportunities Made Equal is a civil rights organization working to ensure fair and equal housing. HOME promotes equal opportunity in housing without restrictions based on such factors as race, color, creed, national origin, sex, age, marital status, disability, sexual orientation, gender identity or expression, lawful source of income or the presence of children within a family. HOME's mission is to assist the people of Western New York to live in the housing and communities of their choice through education, advocacy, enforcement of fair housing laws, and the creation of housing opportunities.

*Insight is published through the generous support of contributors to HOME*



Housing Opportunities Made Equal

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