

## **1. Real Estate Agent Misrepresentation of Material Facts**

### **Background**

A property for sale included a carriage house which had been continuously rented for residential occupancy by the sellers. The buyers purchased the property based on representations that the carriage house could legally be used for residential occupancy and that income from the carriage house would offset expenses associated with the buyer's mortgage. After closing on the property, the buyers discovered that the carriage house could not be legally rented.

The buyers learned that the sellers had requested information from the municipality about renting the carriage house and were informed that the carriage house could be used only as a garage. However, this material fact was not disclosed in the required real estate disclosure documents provided by the seller and their agent to prospective buyers. Indeed, a Disclosure Report omitted two pages in which the sellers were required to provide information on code violations. Additionally, marketing and property information prepared by the listing agent and used in the transaction referred to the potential uses of carriage house, including occupancy, yet failed to provide the required disclosure that renting the carriage house violated municipal codes.

### **Issues**

The sellers, the listing agent, and the listing broker did not disclose that the carriage house could not be used for residential rental. The listing broker and the sellers' agent represented that the carriage house was allowable for residential occupancy. The buyers sought damages for lost value and for costs to convert the carriage house into a garage.

### **Outcome**

Dr. Musil completed an Expert Report addressing the failure of the seller and the listing agent to disclose material facts. The case settled in favor of the buyers.