

## ▪ Here Comes the Judge!



- A Texas court recently upheld the principle that “size matters” during a case in which the square footage of a sold home wasn’t what it advertised. The buyers sued and won. The house turned out to be 253 square feet smaller than the listing agent advertised. The jury awarded the purchasers damages and held the real estate professionals liable for misrepresentation and fraud. The square footage information came from public tax records. The court said the real estate professionals had a duty to get the information right and the “buyers shouldn’t have to pull out a tape measure.”
- Arizona also recently upheld a court decision that an appraiser may be held accountable, not only to their client, but to the consumer. In this case an error of 569 square feet. “We held that an appraiser retained by a lender in connection with a purchase-money mortgage transaction owes a duty of care to the borrower who is the prospective buyer of the home to be appraised.”
- Oklahoma Supreme Court... In its recent opinion, the Court held that the particular facts of the case raised a question of whether the REALTORS<sup>®</sup> had misrepresented the property size “unreasonably, recklessly or dishonestly.” Bypassing the several disclaimers and releases, the Opinion implies that passing along inaccurate square footage data allows a negligence claim based on the licensee’s duties pursuant to the Real Estate License Code regardless of any contrary express contractual terms. The Court’s decision allows the buyers a trial even if they saw a disclaimer by letting them challenge whether the REALTORS<sup>®</sup> knew (or should have known), in the exercise of “reasonable skill and care,” that the courthouse information quoted in the MLS listing was inaccurate.” Bowman v Presley.

These recent cases brought before the judicial system appear to indicate a pattern. Without question, they influence legal precedent. As news spreads among consumers and the legal profession, the liability issue may become much more important and the entire real estate industry may have to answer the question of square footage. As a licensed professional, your best liability protection is offered through the combination of following a written “standard of practice” and providing a written disclosure statement of that *standard*.