

**If you own a home in the Ocean Pointe development in Honolulu, Hawai‘i, you may qualify for home repairs and your rights may be affected by a class action settlement.**

*A judge authorized the dissemination of this Notice. This is not a solicitation from a lawyer.*

- A Settlement has been reached with Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway’s Edge Development, LLC (“Defendants”) in a class action lawsuit claiming that the Defendants failed to install adequate wind resistance systems, including that shot pins were defective and corroding.
- You may be a part of the Class, which includes all eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005. The Ocean Pointe homes that are part of the Class are specifically identified in an exhibit entitled “Ocean Pointe Bolt Homes” accessible on the class website ([www.HasekoClass.com](http://www.HasekoClass.com)).
- Your rights are affected whether you act or do not act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING</b>	If you do nothing, you will be enrolled in the Shot Pin Repair Program and will be eligible for Shot Pin repairs. You will be notified by postcard if the Court grants final approval of the Settlement and be provided information for the Contractor so that you and the Contractor can schedule your repairs.
<b>OBJECT TO THE SETTLEMENT BY JULY 19, 2021</b>	You can object to the Settlement by writing to the Court about why you do not like it.
<b>ATTEND THE COURT’S FAIRNESS HEARING ON AUGUST 10, 2021</b>	You can ask to speak to the Court about the fairness of the Settlement.

- Your rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Repairs will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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### BASIC INFORMATION

#### **1. Why was this Notice issued?**

A court authorized this Notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval to the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, and who can get them.

First Circuit Court Judge James H. Ashford is overseeing this class action. The cases are known as *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, Circuit Court of the First Circuit, State of Hawai'i Civil No. 12-1-3030-11 JHA and *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, DPR No. 17-0447-A (collectively, the "Lawsuit"). The Lawsuit claimed that the Defendants failed to install adequate wind resistance systems, including that shot pins were defective and corroding. The three homeowners who sued are called the Plaintiffs. The companies they sued, Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway's Edge Development, LLC, are called the Defendants.

#### **2. What is this lawsuit about?**

This lawsuit is about the wind resistance systems, including shot pins, installed in certain Ocean Pointe homes. Plaintiffs claim that the Defendants installed inadequate wind resistance systems.

The Defendants deny any and all liability and assert that the wind resistance systems, including shot pins, are adequate.

### 3. What is a class action?

In a class action, a Class Representative or Class Representatives sue on behalf of all people who have similar claims. The people included in the class action are called a Class, and the Class consists of Class Members. The claims of the Class and Class Members are resolved together by one Court.

In this case, Tadashi Mitsuoka, Victoria Mitsuoka, and John G. Stewart have been appointed by the Court as Class Representatives to represent the Class.

### 4. Why is there a Settlement?

You may recall receiving a notice in 2018 indicating that this lawsuit was certified as a class action and that Judge Virginia L. Crandall compelled the claims of the Class to binding arbitration before Louis Chang, Jerry Hiatt, and Sidney Ayabe (“the Panel”). Since that time, the Plaintiffs and Defendants (“Settling Parties”) engaged in Arbitration. After extensive analysis of the evidence and legal issues presented to them leading into and during the Arbitration’s evidentiary phase, the Panel issued its Partial Final Arbitration Decision and Award on February 8, 2021. The Partial Final Arbitration Decision and Award is accessible on the class website ([www.HasekoClass.com](http://www.HasekoClass.com)). The Partial Final Arbitration Decision and Award is not a final award and has not been confirmed or otherwise reviewed by a court of competent jurisdiction. It is not a final judgment or determination. Defendants expressed their intention to oppose the Partial Final Arbitration Decision and Award, including any confirmation proceedings related thereto, whether before the Panel, the Circuit Court and/or on appeal. As part of the Settlement, the Panel has entered a Stipulation and Order which provides that the Partial Final Arbitration Decision and Award is set aside, vacated, expunged, *nunc pro tunc*, and of no force or effect for any purpose, including, but not limited to, for any purported collateral estoppel, *res judicata* or other preclusive effect purposes, effective only upon final approval by the Circuit Court of the Settlement reached by the Parties and the deposit of the settlement payment into the Settlement Fund as discussed below.

Prior to commencing the evidentiary phase of the Arbitration, the Settling Parties also engaged in extensive, arm’s-length Settlement discussions and negotiations, both in several formal joint sessions before Keith W. Hunter of DPR (“the Mediator”) and in numerous other informal discussions with the Mediator. The Settling Parties formally mediated with the Mediator in January 2020, September 2020, and February 2021. Following the Panel’s February 8, 2021 Partial Final Arbitration Decision and Award, and given the Defendants’ position set forth above, the Settling Parties each engaged in additional Settlement discussions through the Mediator to successfully resolve the lawsuit.

## WHO IS INCLUDED IN THE SETTLEMENT

### 5. How do I know if I am included in the Settlement?

Everyone who fits the following description is a “Class Member” and is included in the Settlement: *All eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified at “Exhibit G—Affected Unit Count” to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction.* The Ocean Pointe homes that are part of the Class are specifically identified in an exhibit accessible on the class website ([www.HasekoClass.com](http://www.HasekoClass.com)), which is entitled “Ocean Pointe Bolt Homes.”

### 6. I’m still not sure if I am included. What should I do?

If you are still not sure whether you are included in the Class, you can visit the website or contact the Law Offices of Melvin Y. Agena at 1-808-536-6647.

## THE SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY

### 7. What does the Settlement provide?

Defendants have agreed to create a \$20,000,000.00 Settlement Fund. The Settlement Fund will be used to pay for the Shot Pin Repair Program and the costs of notice and administration (up to \$11,508,150.00), as well as for attorneys’ fees, taxes, costs, Class Representative incentive awards, any amount required by the Special Master, and all other expenses (up to \$8,491,850.00).

If any money remains after making the payments listed above, the balance of the Settlement Fund will first be used to make any additional repairs to Class Member homes related to the Shot Pins as determined by Class Counsel. Additional remaining funds will next be used to pay for any reasonable costs associated with the administration of the Settlement, including to increase Class Member awareness and participation in the Shot Pin Repair Program. Finally, any remaining funds will be given to one or more charitable entities serving Hawai'i that would qualify for *cy pres* distributions as approved by the Court.

**8. What can I get from the Settlement?**

Class Members will be automatically enrolled in the Shot Pin Repair Program.

**9. Tell me more about the Shot Pin Repair Program.**

The Contractor estimates it will take up to 16 months to complete the Shot Pin Repair Program for the entire Class once it begins. As part of the program, the Contractor will replace existing metal nails embedded in concrete foundations with stainless steel anchors to provide a durable, complete foundation load path connection. Most work will be performed from the outside of homes; however, in some instances it may be necessary to perform repairs from the inside of homes.

Complete details, as well as information about the Court-approved Structural Engineer that will review the details of the program and confirm that it complies with all applicable standards and building codes, the Construction Manager that will assist in the administration and management of the program and ensure Contractor compliance, and the Contractor that will perform the repairs are provided in the Settlement Agreement and Release and corresponding Exhibits, all of which are available at [www.HasekoClass.com](http://www.HasekoClass.com).

**10. What rights am I giving up in exchange for the Settlement benefits?**

If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you.

**11. What are the Released Claims?**

If and when the Settlement becomes final, Class Members will release, acquit, and forever discharge the Defendants from any and all past, present, and future claims, controversies, disputes, actions, causes of action, suits, liability or liabilities, obligations, judgments, liens, debts, rights, involving, relating to, resulting from, arising out of, connected or traceable to the Lawsuit. The Class Claims include rights to appeal, losses, demands, or damages, of whatever name or nature, any and all claims for general damages, special damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, punitive damages, diminution in value, damages of every kind or nature whatsoever resulting from, arising out of, connected or traceable to, or in any way relating to, either directly or indirectly, the Lawsuit, including any and all claims asserted therein, for property damage, for contribution, for defense or indemnity (whether written, contractual, in an insurance policy, or otherwise), for reimbursement or recoupment, for attorneys' fees, for litigation costs, and for any and all other additional losses, whether based on any theory in contract, tort, warranty, including, but not limited to, the Home Builder's Limited Warranty, PWC Form No. 117 Rev. 05/02, federal, state or local statute, building code(s), whether in law or equity, whether contingent or uncertain, whether latent or patent, whether known or unknown, and whether anticipated or not, in any manner involving, resulting from, arising out of, connected or traceable to, or in any way relating to, either directly or indirectly, the Lawsuit, including any and all claims and alleged construction defects asserted therein.

The Released Claims specifically include, but are not limited to, claims that the Defendants failed to install adequate wind resistance systems in the Subject Homes, including that shot pins were defective and corroding. The Released Claims do not include claims for bodily injury.

More details about the claims you will be releasing are described in paragraphs 34, 44, and 77-82 of the Settlement Agreement and Release, available at [www.HasekoClass.com](http://www.HasekoClass.com).

**OBJECTING TO THE SETTLEMENT**

You can tell the Court if you do not agree with the Settlement or any part of it.

**12. How do I tell the Court that I do not like the Settlement?**

If you are a Class Member, you can object to the Settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must prepare, sign and mail a written objection stating that you object to the Settlement in *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, Civil

No. 12-1-3030-11 JHA. Your objection must include: (1) your full name, current address, and telephone number; (2) the address of the home or structure included in the Settlement, if different than your current address; (3) the name of the owner of the home or structure, if different from you; (4) a statement that you have reviewed the definitions of the Class, you understand that you are a member of the Class and state that you have not previously opted out of the Class; (5) all legal and factual bases for the objection being made; (6) copies of any documents that you wish to submit relating to your objection; (7) whether you intend to appear at the Fairness Hearing and, if so, whether you will bring your own attorney; and (8) your signature or the signature of the home or structure owner. To be valid, your objection must be sent via first-class mail to the Notice Administrator at the address below with a postmark no later than **July 19, 2021**.

*Mitsuoka, et al. v. Haseko Homes, Inc., et al.*  
Notice Administrator  
P.O. Box 43434  
Providence, RI 02940-3434

**13. May I come to the Court to speak about my objection?**

Yes. You or your attorney may speak at the Final Approval Hearing about your objection. To do so, you must include a statement in your objection indicating that you or your attorney intend to appear at the Final Approval Hearing.

**THE LAWYERS REPRESENTING YOU AND OTHER CLASS MEMBERS**

**14. Do I have a lawyer in this case?**

Yes. The Court appointed Melvin Y. Agena of the Law Offices of Melvin Y. Agena, Graham B. LippSmith and Celene Chan Andrews of LippSmith LLP, and Kenneth S. Kasdan and Sharla Manley of Kasdan Turner Thomson Booth LLLC to represent you and other Class Members. Together these lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**15. How will Class Counsel be paid?**

Class Counsel will ask the Court for an award of attorneys' fees, costs and expenses of up to \$8,491,850.00, which includes incentive awards of \$10,000.00 per structure owned by the Class Representatives (totaling \$20,000.00); up to \$6,666,666.67 in attorneys' fees; up to \$314,133.33 in Hawai'i general excise tax for the City and County of Honolulu on the attorneys' fees; and up to \$1,491,050.00 in reimbursement of litigation costs and any Special Master costs. The Court may award less than these amounts. If approved, these fees, costs, expenses, and awards will be paid from the Settlement Fund.

**THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak at the hearing if you give the required notice, but you do not have to.

**16. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing at 8:30 a.m. on **August 10, 2021**, at the Circuit Court of the First Circuit, State of Hawai'i, Ka'ahumanu Hale, 777 Punchbowl Street, 4<sup>th</sup> Floor, Courtroom 12, Honolulu, Hawai'i 96813-5093, to consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve it. If there are objections, the Court will consider them. The Court will listen to people who have given the required notice that they would like to speak at the hearing (*see* Questions 17 and 18, below). The Court may also decide the amount of fees, costs and expenses for Class Counsel and the payment amount to the Class Representatives. At or after the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. You will be notified by postcard if the Court grants final approval of the Settlement and be provided information for the Contractor so that you and the Contractor can schedule your repairs.

**17. Do I have to come to the hearing?**

No. Class Counsel is working on your behalf and will answer any questions Judge Ashford or the Court may have about the Settlement. But you are welcome to come at your own expense. If you file an objection to the Settlement, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, signed it and provided all of the required information (*see* Question 12), the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**18. May I speak at the hearing?**

Yes. You may ask the Court to speak at the Fairness Hearing. To do so, you must file a written request with the Court stating that it is your “Notice of Intent to Appear at the Fairness Hearing in *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, Civil No. 12-1-3030-11 LWC.” You must include your name, address, phone number, and signature. If you plan to have your own attorney speak for you at the hearing, you must also include the name, address and telephone number of the attorney who will appear. Your written request must be filed with the Notice Administrator by **July 19, 2021** (see Question 12).

**IF YOU DO NOTHING**

**19. What happens if I do not do anything?**

If you do nothing and the Court approves the Settlement, your Ocean Pointe home or structure will be enrolled in the Shot Pin Repair Program. You will be bound by the terms of the Settlement.

If the Court grants final approval of the Settlement, you will receive a postcard notice of the final approval with the contact information for the Contractor so that you and the Contractor can schedule your repairs.

**GETTING MORE INFORMATION**

**20. Is more information about the Settlement available?**

This Notice summarizes the Settlement. More details are available in the Settlement Agreement and Release, and its Exhibits, available at [www.HasekoClass.com](http://www.HasekoClass.com). If you have questions, call 1-808-536-6647; visit [www.HasekoClass.com](http://www.HasekoClass.com); or write to *Mitsuoka, et al. v. Haseko Homes, Inc., et al.*, Notice Administrator, P.O. Box 43434, Providence, RI 02940-3434. You may also contact Class Counsel through the Law Offices of Melvin Y. Agena, 1-808-536-6647.

DATE: June 16, 2021