

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA CIVIL ACTION

TINA BROWN, individually and on behalf of  
others similarly situated, FIRST HOME BUILDERS  
OF FLORIDA, a Florida partnership, on its own behalf  
and on behalf of other general contractors similarly  
situated and LEE BUILDING INDUSTRY  
ASSOCIATION, INC., a Florida corporation, on its  
own behalf and on behalf of its members and others  
similarly situated,

Plaintiffs,

CASE NO. 01-011623-CA-H

v.

“CLASS REPRESENTATION”

LEE COUNTY, FLORIDA,

Defendant.

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**NOTICE OF CLAIMS PROCEDURE FOR PARTICIPATION IN CLASS ACTION  
SETTLEMENT**

IF YOU ENTERED INTO A WRITTEN CONTRACT TO CONSTRUCT A HOME OR  
OTHER DWELLING IN LEE COUNTY, FLORIDA BEFORE DECEMBER 1, 2001 AND LATER  
PAID THE LEE COUNTY SCHOOL IMPACT FEE, YOU MAY HAVE THE RIGHT TO  
PARTICIPATE IN THIS CLASS ACTION SETTLEMENT AND TO RECEIVE A PORTION OF THE  
SETTLEMENT FUNDS.

THIS NOTICE ESTABLISHES THE PROCEDURES YOU MUST FOLLOW IN ORDER TO  
BE ELIGIBLE FOR CONSIDERATION TO RECEIVE A PORTION OF THE SETTLEMENT FUNDS.

THIS MATTER IS TIME SENSITIVE. IF YOU DO NOT SUBMIT YOUR STATEMENT OF  
CLAIM IN ACCORDANCE WITH THE PROVISIONS OF THIS NOTICE BY MAY 14, 2010, YOU  
WILL LOSE YOUR RIGHT TO PARTICIPATE IN THE SETTLEMENT AND YOUR CLAIM WILL  
BE THEREAFTER BE BARRED.

1. The Notice of Proposed Class Action Settlement, which describes the terms of what, as of April 6, 2009, was a proposed settlement, is available at [www.garvinlegal.com](http://www.garvinlegal.com) or from the Clerk of the Court (see paragraph 14 below). The settlement, as described in the Notice of Proposed Class Action Settlement, has since been approved by the Court. Copies of the Court’s Order Preliminarily Approving Settlement and Providing Notice, dated April 7, 2009, and the Court’s Final Order Approving Class Action Settlement, dated September 25, 2009, are also available at [www.garvinlegal.com](http://www.garvinlegal.com) or from the Clerk of the Court. Copies of all three documents may also be obtained from the Class Counsel, Jeffrey R. Garvin, P.A., 7800 University Pointe Drive, Suite 100, Fort Myers, FL 33907 (Phone: (239) 277-0005; Fax (239) 277-0004).

2. To be eligible for consideration to receive a portion of the settlement funds (referred to in the Settlement Agreement and below in this Notice as the “**Class Fund**”) you must have entered into a fully signed contract for the construction in Lee County, Florida of a single family home, a multi-family residence, duplex or two-family attached home or townhouse, or a mobile home, before December 1, 2001 (i.e., on or before November 30, 2001) and subsequently paid a school impact fee applicable to the construction of such home. People and companies who meet those criteria are members of the class subject to this class action settlement, and are referred to in this Notice of Claims Procedure for Participation in Class Action Settlement (“**Notice**”) as either “**class members**” or “**claimants**,” and those two terms are used herein interchangeably. Subject to the possibility of some amount of interest being paid to all claimants in the event there are still funds in the Class Fund after all entitled claimants have been paid, the maximum amount any claimant may receive (for each contract entered into and each corresponding school impact fee paid) is \$2,232.00 for a single family residence; \$691.00 for a multi-family residence, duplex, two-family attached home or townhouse; and \$425.00 for a mobile home.

3. Under the procedures established by the Court, your claim(s) is (are) going to be submitted to James L. Nulman, who has been appointed by the Court to act as Special Master. The Special Master has been directed by the Court to determine which class members who signed construction contracts prior to December 1, 2001 and subsequently paid school impact fees are entitled to receive a portion of the Class Fund pursuant to the terms of the Settlement Agreement, the Order Preliminarily Approving Settlement and Providing for Notice, and the Final Order Approving Class Action Settlement. After reviewing all of the Statements of Claim and supporting documentation that are timely submitted, the Special Master will file his determinations with the Court. Based upon the total number of class members who are ultimately found to be entitled to receive a portion of the Class Fund, it is possible such class members will receive less or more (per applicable contract) than the amounts described in paragraph 2 above. The amounts ultimately to be paid to each eligible class member will be subject to approval by the Court.

#### **Procedure To Submit a Claim (and for Submitting Multiple Claims)**

4. To submit a claim, you must complete the enclosed **Statement of Claim** and submit it to the Special Master with your supporting documentation **by no later than May 14, 2010**. Additional copies of the Statement of Claim may be obtained at [www.garvinlegal.com](http://www.garvinlegal.com), or from Mr. Garvin’s office at the address listed in paragraph 1 above. The types of supporting documentation that may be applicable are described below. If you entered into more than one applicable contract and subsequently paid more than one school impact fee, **a separate Statement of Claim, together with its supporting documentation, must be submitted for each such contract and impact fee paid.**

#### **Timely Submission of Claim(s)**

5. To be submitted timely, your Statement(s) of Claim and supporting documentation, if mailed, **must** be postmarked **by no later than May 14, 2010**, or placed in the hands of a private carrier (such as UPS or Federal Express) **by no later than May 14, 2010**. Although final determinations will not be made until after May 14, 2010, the Special Master will be reviewing the Statements of Claim and all supporting documentation as they are submitted. Claimants are therefore encouraged to submit their Statements of Claim and supporting documentation as soon as they are able to do so. **If a Statement of Claim is not timely submitted as described herein, your claim will thereafter be barred.**

#### **Purpose of Submitting Statement of Claim and Supporting Documentation**

6. The purpose of submitting your Statement of Claim and supporting documentation is to establish for the Special Master that you meet the criteria of the Settlement Agreement and are entitled to receive a refund of the school impact fee you paid. As set forth above, to be entitled to receive a refund of the school impact fee you paid (i.e., to receive a portion of the Class Fund), you must have:

(a) Entered into a fully signed written contract for the construction in Lee County, Florida of a single family home, a multi-family residence, duplex or two-family attached home or townhouse, or a mobile home, before December 1, 2001 (i.e., on or before November 30, 2001), and

(b) Subsequently paid a school impact fee applicable to the construction of such home.

7. As between any given homeowner and the contractor with whom they contracted to build their residence, questions may arise as to which of those two parties paid the school impact fee and, regardless of who actually made the payment to the Lee County, Florida for the school impact fee, which of those two parties is entitled to receive back a refund of the school impact fee (i.e., which of those two parties is entitled to receive a portion of the Class Fund). Therefore, contractors and homeowners should consider submitting such information and documentation to the Special Master as they believe will establish that they, as opposed to the other party to their construction contract, paid the school impact fee.

8. For example, if the parties' contract was for a fixed amount and did not mention impact fees, and the contractor subsequently paid the impact fee without obtaining any additional funds from the homeowner, it is arguable that the contractor, and not the homeowner, is entitled to receive a portion of the Class Fund, because, in this example, the contractor could argue that he/she is the one who actually bore the expense of the school impact fee. However, if that example were changed to provide that the parties' contract was for a fixed amount and did not mention impact fees, and the contractor subsequently paid the impact fee, but the contractor received reimbursement from the homeowner for the impact fee (by way of change order, or otherwise), then it is arguable that the homeowner, and not the contractor, is entitled to receive a portion of the Class Fund, because, in this second example, the homeowner could argue that he/she is the one who actually bore the expense of the impact fee.

### **Examples of Supporting Documentation**

9. All claimants must decide for themselves what types of documentation they wish to submit. Examples of supporting documentation include, but are not limited to:

- (a) The signed construction contract;
- (b) Change orders (and other addenda and modifications to the construction contract);
- (c) Invoices that may reference school impact fees (or that contain any reference to impact fees);
- (d) Correspondence between the homeowner and the contractor that in any way references school impact fees or any other impact fees, or that the claimant otherwise believes may in any way be relevant;
- (e) Cancelled checks for the payment or reimbursement of any school impact fees (or any other impact fees);
- (f) Receipts for payment of the school impact fees (or that reference any impact fees), whether from Lee County, Florida, or from anyone else; and
- (g) Any other documentation or information that the claimant believes may in any way be relevant to the claimant's claim to a portion of the Class Fund.

10. Because the Class Counsel, Jeffrey R. Garvin, P.A., represents all class members (i.e., all claimants), it would be a conflict of interest for Mr. Garvin or his firm to advise any particular class member on what they should submit, and Mr. Garvin and his firm are therefore not in a position to do so. Likewise, the Special Master cannot provide advice to any class member as to what they should submit. If in doubt about what to submit, class members are encouraged to consult with an attorney of their choosing. Beyond that, if a class member is in doubt about whether to submit particular pieces of information or documentation, it is suggested that they err on the side of caution and submit the information and documentation.

**Submission of Statements of Claim and Supporting Documentation, and Communications with the Special Master**

11. Claimants should submit their **original, signed and notarized Statements of Claim** and **copies of all supporting documentation** to the Special Master. All such information must be mailed (or sent by a private carrier, such as UPS or Federal Express) to the Special Master, whose address is:

**James L. Nulman  
Special Master  
15880 Summerlin Rd.  
Ste. 300 – PMB 311  
Fort Myers, FL 33908**

**Remember, however, that your Statement of Claim and any and all supporting documentation must be postmarked (or delivered to a private carrier) by no later than May 14, 2010. This includes any additional information or documentation that you wish to submit after your initial submission.**

You may also email the Special Master if you have procedural questions about this process. The Special Master's email address is: **specialmaster@nulmanmediation.com**. The Special Master may not be able to respond to certain types of questions, such as questions about what type of information or documentation to submit. If that is the case, the Special Master will respond indicating that he is not in a position to answer the particular question you have posed and, if appropriate, will refer you to the Class Counsel, Mr. Garvin, or perhaps to your own attorney. The ability to email the Special Master is only in relation to procedural questions you may have. Statements of Claim and supporting documentation should **not** be emailed, but rather all such documentation must be sent to the Special Master by mail or by a private carrier (such as UPS or Federal Express) to the address listed above.

**Submission of Original Documents versus Copies**

12. You should submit your **original, signed and notarized Statement of Claim** to the Special Master. You should submit **copies of all supporting documentation**, as the documents you submit (your Statement of Claim and all supporting documentation) will **not** be returned to you. **You are encouraged to keep a copy of your Statement of Claim and the originals of your supporting documentation for your records.**

**Change of Your Address**

13. If you have changed your address, or would like future information (and/or any payments to which you may be entitled) to be delivered to a different address, please provide your new address information in writing to Class Counsel, Jeffrey R. Garvin, P.A., 7800 University Pointe Drive, Suite 100, Fort Myers, FL 33907 (Phone: (239) 277-0005; Fax (239) 277-0004).

**Additional Information**

14. If you have any other questions about this lawsuit or the settlement, you may visit **www.garvinlegal.com**. You may also look at and copy the legal documents filed with the Court at any time during regular business hours at the office of the Lee County Clerk of the Court, Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL 33901.