

# If you own a home in the Kikaha at Wehilani and Makana Kai at Wehilani development in Waikoloa, Hawai‘i, you may qualify for a payment and your rights may be affected by a class action settlement.

*A state court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been reached in a class action lawsuit against Castle & Cooke Homes Hawaii, Inc. and Castle & Cooke Waikoloa, LLC (jointly, “Castle & Cooke”) about whether the wind resistance design in the Kikaha at Wehilani and Makana Kai at Wehilani homes is defective.
- You received this Notice because you may be part of the Waikoloa-Wind Class in this Settlement. The “Waikoloa-Wind Class” includes all individual and entity homeowners—and homeowners’ associations consisting of individual and entity homeowners—who own homes whose construction was completed on or after August 20, 2003 with wind protection systems in the Castle & Cooke housing developments known as Kikaha at Wehilani and Makana Kai at Wehilani, located in the City of Waikoloa and County of Hawai‘i, Island of Hawai‘i.
- If you are a member of the Waikoloa-Wind Class you are eligible to receive a payment from this settlement. After the settlement is approved and becomes final, you will be mailed a Notice of final approval and a Form W-9. You will be required to complete and return the Form W-9 online or by mail to receive your settlement payment.
- Your legal rights may be affected whether you act or do not act. Please read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A FORM W-9 WHEN IT BECOMES AVAILABLE</b>	The only way to get a settlement payment of an estimated \$2,536 per Waikoloa-Wind Structure. Give up certain rights.
<b>EXCLUDE YOURSELF</b>	Get out of the lawsuit. Keep rights. Do not get a settlement payment. This is the only option that allows you to ever be part of another lawsuit against Castle & Cooke about the legal claims resolved by this settlement.
<b>OBJECT</b>	You can object to the settlement by writing to the Court about why you do not like it. If you object, you will still get a settlement payment, but you will give up certain rights.
<b>GO TO A HEARING</b>	Ask for permission to speak in Court about the fairness of the settlement.
<b>DO NOTHING</b>	Stay in this lawsuit. Do <u>not</u> get a settlement payment. Give up rights to be part of another lawsuit against Castle & Cooke about the legal claims resolved by this settlement.

- Your legal 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. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.

## BASIC INFORMATION

### 1. What is a class action?

In a class action, one or more people known as a Plaintiff or a Class Representative 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. Class Members have the option to exclude themselves from (or opt out of) the Class, object to the settlement, submit a Form W-9 to receive a settlement payment or do nothing. If a Class Member elects to be excluded from the Class, they will not be bound by the results of this class action and will not receive any benefits from the settlement. More information regarding Class Member’s rights and the steps that need to be taken to exercise those rights is provided below.

In this case, Irene O. Britton has been appointed by the Court as Class Representatives to represent the Class.

**2. What is this class action lawsuit about?**

This lawsuit is about the wind resistance design in certain Wehilani development homes. Plaintiffs claim that the wind design in the *Waikoloa-Wind Class Structures* in Waikoloa had insufficient strength and violated the applicable building codes.

Castle & Cooke denies all of Plaintiffs’ claims and allegations in the lawsuit.

**3. Why did I receive this Notice?**

You received this Notice because records indicate that you may own a home built by Castle & Cooke in the Kikaha at Wehilani and/or Makana Kai at Wehilani development located in the City of Waikoloa and County of Hawai‘i, Island of Hawai‘i that was completed during the time period of, and with the wind design at issue in, this class action and therefore you may be included in the settlement as a Waikoloa-Wind Class Member.

**4. Why is there a settlement?**

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of further years of complex litigation, including additional Court and Arbitration proceedings on critical issues, and the people affected will get compensation in exchange for a release of claims. All parties think the settlement represents is best for everyone and represents a fair, reasonable, and adequate resolution of the Waikoloa-Wind Lawsuit.

**5. What Court Authorized this Notice?**

A state 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 approve the settlement. This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, and who may qualify for them.

A Judge of the Circuit Court of the First Circuit, State of Hawai‘i is overseeing this class action. The case is known as *Irene O. Britton, et al., v. Castle & Cooke Homes Hawaii, Inc., et al.*, No. 13-1-2277-08 GWBC. The homeowner who sued is called the Plaintiff. The company they sued, Castle & Cooke Homes Hawaii, Inc. and Castle & Cook Waikoloa, LLC, is called the “Defendant” or “Castle & Cooke.”

**WHO IS INCLUDED IN THE SETTLEMENT?**

**6. How do I know if I am included in the settlement?**

You are included in the settlement as a Waikoloa-Wind Class Member if you are an individual or entity homeowners, or homeowners’ associations whose members consist of individual and entity homeowners, who on the date of Final Judgment own homes whose construction was completed on or after August 20, 2003 with wind protection systems in the Castle & Cooke housing developments known as Kikaha at Wehilani and Makana Kai at Wehilani, located in the City of Waikoloa and County of Hawai‘i, Island of Hawai‘i.

**7. Are there exceptions to being included in the settlement?**

Yes, even if you meet the above definition, you are not included in the Waikoloa-Wind Class or settlement if you: (1) are any individual, entity, or association of homeowners who have only homes completed prior to August 20, 2003; (2) validly and timely exclude yourself from the Waikoloa-Wind Class; or (3) are any judicial officer who has presided or will preside over this case.

**THE SETTLEMENT BENEFITS–WHAT YOU GET**

**8. What does the settlement provide?**

A \$319,678.09 Waikoloa-Wind Settlement Fund will be created. Of the Settlement Fund, \$253,600.00 will be used to pay Waikoloa-Wind Class Members, up to \$2,400 will be used to pay the costs associated with administering the settlement, and up to \$63,678.09 will be used to pay attorneys’ fees, costs, and applicable Hawai‘i General Excise tax for the City and County of Honolulu, as well as service awards to the Class Representatives.

If any money remains in the Waikoloa-Wind Settlement Fund after making the payments described above, it will first be used to pay any additional reasonable settlement administration costs incurred, then the remaining amount will be given to a charitable entity or entities serving Hawai‘i that are related to affordable housing issues and would qualify for *cy pres* distributions as approved by the Court.

**9. How much will my payment be?**

The \$253,600 will be divided equally among all Waikoloa-Wind Class Structures and paid to the qualifying Waikoloa-Wind Class Members. This means for each Waikoloa-Wind Class Structure, the owners at the time of Final Judgment will receive an estimated payment of \$2,536.00.

Waikoloa-Wind Class Structures means any residential dwelling unit, whether a single-family home, individual townhome, located in the Kikaha at Wehilani and/or Makana Kai at Wehilani developments owned by a Waikoloa-Wind Class Member on the date the settlement is approved and becomes final.

**10. How can I get a payment?**

You do not have to do anything now to receive a settlement payment. After the settlement is approved and becomes final, you will be mailed a Notice of final approval and a Form W-9. The United States Internal Revenue Service requires that you complete and return the complete Form W-9 online or by mail for you to receive your settlement payment.

Notice of final approval and Form W-9s will not be issued before October 4, 2021. If you do not receive a Notice of final approval and Form W-9, or if you need to obtain one or more additional Forms W-9, you may download them from [www.waikoloawind.com](http://www.waikoloawind.com), call 1-888-975-2374, or write Waikoloa-Wind Settlement Administrator, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606.

**11. When will I receive a Notice of final approval and form W-9?**

The Court will hold a hearing on August 25, 2021 to decide whether to approve the Waikoloa-Wind Settlement. Notice of final approval and Form W-9s will be issued approximately 10 days after the Judge approves the settlement and any appeals are resolved. You will have 60 days to complete and return or submit your Form W-9.

**12. When will I get my settlement payment?**

Payments will be issued if and when the Judge approves the settlement and any appeals are resolved, the Notice of final approval and Form W-9 is issued and the deadline to submit completed Form W-9s has passed. Please be patient.

**13. What am I giving up to get a payment or stay in the Waikoloa-Wind Settlement Class?**

Unless you exclude yourself, you are staying in the Waikoloa-Wind Settlement Class. If the settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. That means you will not be able to sue, continue to sue, or be part of any other lawsuit against Castle & Cooke and related parties about the legal issues made in *this* case and released by the Settlement Agreement. The specific rights you are giving up are detailed in paragraph 64 of the Settlement Agreement and Release, available at [www.waikoloawind.com](http://www.waikoloawind.com).

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from this Settlement, but you want to keep the right to sue or continue to sue Castle & Cooke, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself or is sometimes referred to as opting out of the settlement.

**14. How do I get out of the Waikoloa-Wind Settlement?**

To exclude yourself from the Waikoloa-Wind Settlement Class, you must send a letter by mail saying that you want to be excluded from Waikoloa-Wind Settlement in *Britton v. Castle & Cooke Homes Hawaii, Inc.* Be sure to include: your full name, current address, and telephone number; and the address of the Waikoloa-Wind Class Structure that qualifies you as a Waikoloa-Wind Settlement Class Member, if different than your current address. You must mail your exclusion request postmarked no later than **July 20, 2021** to:

Waikoloa-Wind Settlement Administrator  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606

**15. If I exclude myself, can I still get a settlement payment?**

No. If you exclude yourself from the settlement, you are telling the Court that you don't want to be part of the Waikoloa-Wind Settlement Class. You can only get a settlement payment if you stay in Waikoloa-Wind Settlement Class and submit a valid Form W-9 as described above.

**16. If I do not exclude myself, can I sue Castle & Cooke for the thing later?**

No. Unless you exclude yourself, you are giving up the right to sue Castle & Cooke and related parties for the claims that this settlement resolves.

**THE LAWYERS REPRESENTING YOU**

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

Yes. The Court has appointed Melvin Y. Agena of the Law Offices of Melvin Y. Agena, Glenn K. Sato of the Law Offices of Glenn K. Sato, Graham B. LippSmith and Celene Chan Andrews of LippSmith LLP as Waikoloa-Wind Class Counsel to represent you and other Wind Class Members. 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.

**18. How will the lawyers be paid?**

Waikoloa-Wind Class Counsel will ask the court for payment of attorneys' fees, costs and expenses of up to \$63,678.09. This amount includes up to \$57,061.48 in Waikoloa-Wind' Class Counsel's attorneys' fees (not to exceed 18% of the Waikoloa-Wind Settlement

QUESTIONS? CALL 1-888-975-2374 OR VISIT [www.waikoloawind.com](http://www.waikoloawind.com)

Fund); up to \$2,380.60 in applicable Hawai'i General Excise Tax for City and County of Honolulu on Waikoloa-Wind' Class Counsel's attorneys' fees (not to exceed 4.712% of the attorneys' fees awarded); up to \$1,736.01 for litigation costs; and up to \$2,500 in total Class Representative incentive award. If approved by the Court, these amounts will be paid from the \$319,678.09 Waikoloa-Wind Settlement Fund.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the Waikoloa-Wind Settlement or some part of it.

### 19. How do I tell the Court that I don't like the settlement?

If you are a Waikoloa-Wind Settlement Class Member and do not request to be excluded, you can object to the Waikoloa-Wind Settlement. You can give reasons why you think the Court should not approve it. The Court will consider your views before making a decision. To object, you must send a letter saying that you object to the Waikoloa-Wind settlement in *Britton v. Castle & Cooke Homes Hawaii, Inc.* Be sure to include: your name, current address, and telephone number; the address of the Class Structure establishing your status as a Waikoloa-Wind Settlement Class Member, if different from your current address; identify the owner of the Waikoloa-Wind Class Structure; a statement that you have reviewed the definitions of the Class and understand that you are a member of the Waikoloa-Wind Settlement Class and that you have not opted out of the Waikoloa-Wind Settlement Class; the reasons why you object to the settlement; and any documents related to your objection. Mail the objection to the Waikoloa-Wind Settlement Administrator postmarked no later than **July 20, 2021**:

Waikoloa-Wind Settlement Administrator  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606

### 20. What's the difference between objecting to and asking to be excluded from the settlement?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Waikoloa-Wind Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

## THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Waikoloa-Wind Settlement. You may attend and you may ask to speak, but you don't have to.

### 21. When and where will the Court determine whether to approve the settlement?

The Court will hold a virtual Final Approval Hearing at 3:00 p.m. on August 25, 2021 at the Circuit Court of the First Circuit, State of Hawai'i. Please check the Court's website at <https://www.courts.state.hi.us/covid-19-information-page> for additional Courthouse and Facility Updates in response to COVID-19. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Gary W.B. Chang will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Waikoloa-Wind Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

### 22. Do I have to come to the Final Approval Hearing?

No. Waikoloa-Wind Class Counsel will answer any questions Judge Gary W.B. Chang may have. But, you are welcome to come at your own expense. If you send in an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

### 23. May I speak at the Final Approval Hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Britton v. Castle & Cooke Homes Hawaii, Inc.*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **July 20, 2021**, and be sent to the Waikoloa-Wind Settlement Administrator at the address in Question 19. You cannot speak at the hearing if you excluded yourself.

## IF YOU DO NOTHING

### 24. What happens if I do nothing at all?

If you do nothing, you will not get any money from this settlement and you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Castle & Cooke or related parties about the legal issues in this case, ever again.

## GETTING MORE INFORMATION

### 25. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement and Release, available at [www.waikoloawind.com](http://www.waikoloawind.com). If you have questions, call 1-888-975-2374 toll-free or write to the Waikoloa-Wind Settlement Administrator, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606.