

NORTH CAROLINA GENERAL COURT OF JUSTICE, SUPERIOR COURT DIVISION

***If you paid Capacity Fees (“Impact Fees”) on or between March 23, 2015 and June 20, 2018 or Transportation Fees on or between April 9, 2015 and June 1, 2018 to the Town of Apex (“Town”), then you may be eligible to receive benefits from a class action settlement***

*The Superior Court of Wake County, North Carolina authorized this notice.*

*This is not a solicitation from a lawyer.*

- This notice informs you of a proposed settlement in a class action lawsuit, based on allegations that the Town unlawfully collected water and sewer Capacity Fees, Capital Reimbursement Fees, and System Development Fees, along with unlawfully collecting Transportation Fees, in order to retain funds for use on future projects and development. The settlement resolves the lawsuit. Town of Apex denies that it did anything wrong or unlawful and denies any liability to Plaintiffs and to the members of the Settlement Class.
- You will need to file a Claim Form in order to qualify for benefits under the Settlement.
- Your legal rights are affected whether you act, or don’t act. Read this notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>SUBMIT A CLAIM FORM BY AUGUST 26, 2019</b>	This is the only way to receive benefits.
<b>EXCLUDE YOURSELF BY APRIL 29, 2019</b>	Request to be excluded and get no benefits from the Settlement. This is the only option that allows you to start or continue your own lawsuit against the Town for any claims you might have that would otherwise be subject to the Release contained in the Settlement. The Town will not have waived any defense it may have to any such lawsuit.
<b>OBJECT BY APRIL 29, 2019</b>	Write to the Court about why you do not like the Settlement or why you think the Settlement is unfair, inadequate or unreasonable or should not be approved.
<b>GO TO A HEARING</b>	Ask to speak in Court about the Settlement and whether it should be approved. The Court’s Final Hearing is scheduled for May 28, 2019 at 10:00 a.m.
<b>DO NOTHING</b>	Get no benefits. Give up any rights you might have to ever sue the Town about the legal claims in this case and resolved by the Settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. The deadlines may be moved, canceled, or otherwise modified, so please check the settlement website at [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com) regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the Settlement. Benefits will be provided to eligible participants only if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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QUESTIONS? VISIT [WWW.APEXIMPACTFEESETTLEMENT.COM](http://WWW.APEXIMPACTFEESETTLEMENT.COM)

## **BASIC INFORMATION**

### **1. Why is there a notice?**

If you received Notice of the Settlement by mail, then you have been identified as a Settlement Class Member. The Court authorized that you be sent notice because you have a right to know about a proposed Settlement of a class action lawsuit involving payment of these fees, and about your options under the Settlement. This Notice summarizes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, how those benefits will be provided, and other important information.

However, this Notice is only a summary of the Settlement. The full Settlement Agreement, titled “Stipulation of Settlement and Release,” is available for review at [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com). If there is any conflict between this Notice and the Settlement, the Settlement Agreement governs. You should review the full Settlement Agreement before deciding what to do.

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

This settlement resolves two cases filed against Town of Apex:

- 1) Upright Builders, Inc., and Legacy Custom Homes, Inc. vs. Town of Apex (18-CVS-3720), Wake County Superior Court (Sewer and water Impact Fee case)
- 2) Upright Builders, Inc., vs. Town of Apex (18-CVS-4384), Wake County Superior Court (Transportation Impact Fee case).

The cases allege that the Town of Apex unlawfully collected water and sewer Capacity Fees, Capital Reimbursement Fees and System Development Fees (a/k/a “Impact Fees”) between March 23, 2015 and June 20, 2018 and Transportation Fees between April 9, 2015 and June 1, 2018. “Impact Fees”, as alleged in the above actions, means any Capacity Fee, Capital Reimbursement Fee or System Development Fee alleged by any Claimant or Plaintiff in the Action to have been collected improperly by the Town for water and/or sewer as a condition of building a structure in the planning jurisdiction of the Town.

The Plaintiffs’ Complaint, Settlement Agreement, and other case-related documents are posted on the website, [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com). The Settlement resolves the lawsuits.

The Parties agreed to conduct a court ordered mediation before Robert Beason and a mediation was thereafter held by the Parties on January 16, 2019, in an effort to negotiate in good faith and at arms-length to determine if settlement between the parties was possible or if protracted litigation would be required.

### **3. Why is this a class action?**

In a class action, one or more people, called “Class Representatives” (in this case Upright Builders Inc., and Legacy Custom Homes, Inc.) sue on behalf of people who have similar claims. Together, all these people with similar claims (except for those who exclude themselves) are members of the Settlement Class.

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

The Parties agreed to a settlement to avoid the costs and risks of further litigation and provide benefits to Settlement Class members. The Settlement Class representatives and the lawyers representing them (called “Class Counsel”) believe that the Settlement is in the best interests of all Settlement Class Members.

**QUESTIONS? VISIT [WWW.APEXIMPACTFEESETTLEMENT.COM](http://WWW.APEXIMPACTFEESETTLEMENT.COM)**

## **WHO IS PART OF THE SETTLEMENT?**

### **5. How do I know if I am in the settlement?**

You are in the Settlement Class if (a) between March 23, 2015, through June 20, 2018 you paid **Capacity Fees, Capital Reimbursement Fees, or System Development Fees** (also referred to as “Impact Fees”) to the Town as a condition of building a structure in the planning jurisdiction of the Town; and/or if (b) between April 9, 2015 and June 1, 2018 you paid **Transportation Fees** to the Town, for impact to the existing transportation facilities within the Town jurisdiction. The payors of these Impact Fees and Transportations fees are referred to as the “Capacity Settlement Claimants” and their settled claims are referred to as the “Capacity Settlement Claims.”

### **6. What if I am still not sure if I am included in the settlement?**

If you are not sure whether you are a Settlement Class member, or have any other questions about the Settlement Agreement, visit the website at [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com), or contact the Settlement Administrator. You can send questions by mail to: Upright Builders v Town of Apex Settlement, 1650 Arch Street, Suite 2210 Philadelphia, PA 19103; by emailing [info@ApexImpactFeeSettlement.com](mailto:info@ApexImpactFeeSettlement.com); or calling toll-free 1-855-463-2690.

## **SETTLEMENT BENEFITS**

### **7. What does the settlement provide?**

If the Settlement is approved, the Town will provide payments to class members who paid Capacity Fees, Capital Reimbursement Fees, System Development Fees and/or Transportation Fees. Town of Apex will establish a Settlement Fund equal to fifteen million three hundred fifty-six thousand six hundred seventy-three dollars (15,356,673) less attorneys’ fees and costs as awarded by the court.

#### **What Settlement Class members who paid Capacity Fees can get:**

Payments for the Capacity Settlement Claims, including attorneys’ fees and fees for the Settlement Administrator, are subject to a maximum payout, or maximum settlement value of \$15,356,673.00 (“Fund”). The Final Settlement amount shall be determined upon receipt of all claim forms within the prescribed claim form period.

#### **Payments for the Capacity Settlement Claims will be disbursed as follows:**

- The Town will pay from the Fund to all proper Capacity Settlement Claimants who paid from 3/23/2015 to 10/1/2017 and Transportation Settlement Claimants who paid from 4/9/2015 to 6/1/2018, 60 days from the Effective Date, a pro rata amount up to 50% of the Fees paid to the Town by proper Capacity Settlement Claimants who paid from 3/23/2015 to 10/1/2017 and proper Transportation Settlement Claimants who paid from 3/23/2015 to 6/1/2018, less awarded attorneys’ fees, expenses, and service awards. These payments will be capped at \$9,468,207.
- The Town will pay from the Fund to all proper Capacity Settlement Claimants who paid from 10/1/2017 to 6/20/2018, 60 days from the Effective Date, a pro rata amount up to 10% of the Capacity Fees paid to the Town by proper Capacity Settlement Claimants who paid from 10/1/2017 to 6/20/2018, less awarded attorneys’ fees, expenses, and service awards. This amount will be capped at \$1,416,011.
- The Town will pay from the Fund to all proper Capacity Settlement Claimants who paid Water Capacity Fees from 10/1/2017 to 6/20/2018, 60 days from the Effective Date, a pro rata amount up to the amount of overpayment of Water Capacity Fees as such fees were established by the Town of Apex on 6/20/2018 paid to the Town by proper Capacity Settlement Claimants who paid from 10/1/2017 to 6/20/2018, less awarded attorneys’ fees, expenses, and service awards. This amount will be capped at \$4,472,455.

**QUESTIONS? VISIT [WWW.APEXIMPACTFEESETTLEMENT.COM](http://WWW.APEXIMPACTFEESETTLEMENT.COM)**

**What Settlement Class members who paid Transportation Fees can get:**

The Parties agree, that with the consent of the Court, that any remaining funds in the Settlement Fund shall revert to the Town for use in its capital and operational needs for the provision of clean potable water, sanitary sewer, and re-use water for the general benefit of the Class Plaintiffs, Class Members, and their respective successors and/or assigns, as well as the citizens and residents of the Town, generally.

**8. What am I giving up to stay in the Class?**

Unless you exclude yourself from the Settlement, you can't sue the Town of Apex, continue to sue, or be part of any other lawsuit against the Town about the legal issues in this case. It also means that all of the decisions by the Court will bind you. The claims you will release are the Released Claims, which are fully described in the Settlement Agreement. The Settlement Agreement is available at [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com).

**HOW TO GET BENEFITS**

**9. How can I receive benefits?**

To receive benefits, each Settlement Class Member must complete the Claim Form. A Claim Form should have been mailed to you. You can also get a Claim Form at [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com), or by writing to the address below:

Upright Builders et al. v. Town of Apex Settlement  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

Please read the Claim Form instructions carefully. Fill out the Claim Form, sign it, get it notarized (for all claims in excess of \$5,000), and mail it to the Settlement Administrator postmarked no later than **August 26, 2019** to the address listed above.

If you do not submit a valid Claim Form by the deadline, you will not receive any settlement benefit.

**10. When will I get my benefits?**

Settlement Class members who submit timely, complete, and valid claim forms will receive the benefits for which they qualify after the Court grants "final approval" to the Settlement and after any appeals are resolved. If the Court approves the Settlement after a hearing on May 28, 2019, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**11. How do I get out of the settlement?**

**QUESTIONS? VISIT [WWW.APEXIMPACTFEESETTLEMENT.COM](http://WWW.APEXIMPACTFEESETTLEMENT.COM)**

If you want to keep the right to sue the Town of Apex over the legal issues in this case, then you must take steps to get out of this Settlement and give up your right to benefits under this Settlement. This is called asking to be excluded from—or sometimes “opting out” of—the settlement class. To exclude yourself from the Settlement, you must complete and mail to the Claims Administrator a letter that includes the following:

- A caption or title that identifies it as “Request for Exclusion in Upright Builders, Inc. v. Town of Apex, 18 CVS 003720; (Superior Court Division of Wake County, North Carolina)”;
- Your name, business address, and address of the property where the alleged Impact Fees were paid and date of payment;
- A statement that you wish to be excluded from the Settlement;
- Your request must be personally signed by the party requesting exclusion.

You must mail your exclusion request, postmarked no later than **April 29, 2019** to the following addresses:

<u><b>Class Counsel</b></u>	<u><b>The Town’s Counsel</b></u>
Daniel K. Bryson John Hunter Bryson Whitfield Bryson & Mason LLP 900 W. Morgan St. Raleigh, NC 27603	Susan Burkhart Cranfill Sumner & Hartzog, LLP 5420 Wade Park Boulevard, Suite #300 Raleigh, North Carolina 27607
<u><b>The Town’s Counsel</b></u>	<u><b>Settlement Administrator</b></u>
Laurie Hohe TOWN OF APEX P.O. Box 250 Apex, North Carolina 27520	Class Action Opt-Out Attn: Upright Builders v. Town of Apex Settlement PO Box 58220 1500 John F Kennedy Blvd, Suite C31 Philadelphia, PA 19102

If you don’t submit your request for exclusion on time or if it is incomplete, you will remain a Settlement Class Member and will not be able to sue the Town of Apex about the claims in this lawsuit. You may opt out of the Settlement Class only for yourself. So-called “mass” or “class” opt outs, whether filed by third parties on behalf of a “mass” or “class” of Settlement Class members or multiple Settlement Class members where no personal statement has been signed by each and every individual Settlement Class Member, are not allowed.

**12. If I don’t exclude myself, can I sue the Town of Apex for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue the Town of Apex for the claims that this Settlement resolves. The claims that this Settlement resolves are fully described in the Settlement Agreement. The Settlement Agreement is available at [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com). If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit.

**13. If I exclude myself, can I still get benefits?**

No. You will not receive any benefits from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not send in a Claim Form asking for benefits.

**OBJECTING TO THE SETTLEMENT**

**QUESTIONS? VISIT [WWW.APEXIMPACTFEESETTLEMENT.COM](http://WWW.APEXIMPACTFEESETTLEMENT.COM)**

**14. How can I tell the Court if I do not like the settlement?**

If you are a settlement Class Member, you can object to the Settlement or to Class Counsel’s request for attorneys’ fees and expenses. To object, you must send a notarized letter that includes the following:

- A caption or title that identifies it as “Objection to Class Settlement in Upright Builders, Inc. v. Town of Apex, 18 CVS 003720; (Superior Court Division of Wake County, North Carolina);”
- Identify whether the objection is to the Settlement Class;
- Set forth the specific reason(s), if any, for each objection, including all legal support the Settlement Class Member wishes to bring to the Court’s attention and all factual evidence the Settlement Class Member wishes to introduce in support of the objection;
- Include the name and address of the Settlement Class Member; Include the personal signature of the Settlement Class Member;
- Include an identification, by case style and number, of any other class settlements the objector or the objector’s attorney(s) have asserted an objection; and
- Include an identification of all attorneys having a financial interest or stake in the objection.

Your objection, along with any supporting material you wish to submit, must be filed with the Court, with a copy delivered to Class Counsel, and the Town’s Counsel postmarked no later than **April 29, 2019** at the following addresses:

<u><b>Class Counsel</b></u>	<u><b>The Town’s Counsel</b></u>
Daniel K. Bryson John Hunter Bryson Whitfield Bryson & Mason LLP 900 W. Morgan St. Raleigh, NC 27603	Susan Burkhart Cranfill Sumner & Hartzog, LLP 5420 Wade Park Boulevard, Suite #300 Raleigh, North Carolina 27607
<u><b>The Town’s Counsel</b></u>	<u><b>Court</b></u>
Laurie Hohe TOWN OF APEX P.O. Box 250 Apex, North Carolina 27520	Clerk of Superior Court Wake County Superior Court 316 Fayetteville Street Raleigh, North Carolina 27601

**15. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you don’t like something about the Settlement. You can object to the settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don’t want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

**THE LAWYERS REPRESENTING YOU**

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

**QUESTIONS? VISIT [WWW.APEXIMPACTFEESETTLEMENT.COM](http://WWW.APEXIMPACTFEESETTLEMENT.COM)**

Yes. The Court has appointed the following lawyers, called “Class Counsel,” to represent all Class Members: Daniel K. Bryson and John Hunter Bryson of Whitfield Bryson & Mason LLP. You will not be personally charged for these lawyers. They will be paid under the terms of the Settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

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

Class Counsel will ask the Court to approve attorneys’ fees and reimbursement of expenses not to exceed one third the value of the Settlement fund. The Court will determine the amount of fees and expenses to award. Class Counsel will also request that \$5,000 be paid to each of the Class Representatives who helped the lawyers on behalf of the whole Class.

**THE COURT’S FINAL APPROVAL HEARING**

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

The Court will hold a Final Approval Hearing on May 28, 2019 at 10:00 a.m. at the Wake County Civil Courthouse, 316 Fayetteville Street, Raleigh, North Carolina 27601.

The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com) for updates. At the Final Approval Hearing, the Court will consider whether the Settlement Agreement is fair, reasonable, and adequate. The Court will also consider how much to pay Class Counsel and the Settlement Class representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

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

No. Class Counsel is willing to answer any questions that the Court may have. But you may come to the hearing at your own expense if you wish. If you send an objection, you don’t have to come to Court to talk about it. As long as you mailed your written objection on time to the proper addresses, the Court will consider it. You may also pay your own lawyer to attend the hearing, but it’s not required that your own attorney attend.

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

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. If you are represented by an attorney, the attorney must file a notice of appearance 30 days before the originally scheduled date of the Final Approval Hearing, and serve a copy of the notice to Class Counsel and the Town’s Counsel. The Settlement Agreement and Preliminary Approval Order found at [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com) contain the requirements for notices of appearance by attorneys.

**IF YOU DO NOTHING**

**21. What happens if I do nothing at all?**

**QUESTIONS? VISIT [WWW.APEXIMPACTFEESETTLEMENT.COM](http://WWW.APEXIMPACTFEESETTLEMENT.COM)**

If you do nothing, you will not get any benefits from the settlement. Unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Town about the legal issues in this case, ever again.

## **GETTING MORE INFORMATION**

### **22. How do I get more information?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a complete copy of the Settlement Agreement and other information at [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com). If you have additional questions or want to request a Claim Form, you can visit the settlement website at [www.ApexImpactFeeSettlement.com](http://www.ApexImpactFeeSettlement.com); or write to the Settlement Administrator:

Upright Builders v. Town of Apex  
Settlement Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE CONCERNING THIS CASE.**

**QUESTIONS? VISIT [WWW.APEXIMPACTFEESETTLEMENT.COM](http://WWW.APEXIMPACTFEESETTLEMENT.COM)**