

# You could get a payment for your damaged Forestex siding from a proposed class action settlement.

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

- The parties have agreed and proposed to the Court a settlement in a class action lawsuit about whether Stimson Lumber Company improperly marketed Forestex hardboard siding and whether it was appropriate for use on the outside of a building.
- The settlement pays valid claims for qualifying damage to Forestex siding manufactured by Stimson that was installed into homes and structures in **Washington, Oregon, California, Colorado, Hawaii, Idaho, and Utah.**
- Your legal rights are affected whether you act or not. Read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>REQUEST A CLAIM FORM</b>	The only way to get a payment.
<b>DO NOTHING</b>	Get no payment.
<b>OBJECT</b>	Write to the Court about why you don't like the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.

- These legal rights and options—and the deadlines to exercise them—are explained in this notice.
- A Court still has to decide whether to approve the settlement. If the settlement is approved and becomes “final,” claim forms will be sent to all those who request them, so that payments can be made to people whose claims are approved.

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QUESTIONS? CALL 1-800-427-2763 OR VISIT [www.forestexclaims.com](http://www.forestexclaims.com).

## BASIC INFORMATION

### 1. Why did the Court issue this notice?

The Court ordered this notice because you have a right to know about a proposed settlement in the class action lawsuit about Forestex siding manufactured by Stimson Lumber Company, and about all of your options, before the Court decides whether to approve the settlement. The settlement calls for payments to be made to people who send in valid claim forms.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge Yu of the Superior Court of Washington in and for King County is in charge of this case, called *Gardner v. Stimson Lumber Company*, No. 00-2-17633-3SEA. The people who sued are called the Plaintiffs, and the company they sued, Stimson Lumber Company (“Stimson”), is called the Defendant.

### 2. What is this lawsuit about?

The Plaintiffs said that Stimson used unfair and deceptive practices in marketing Forestex siding manufactured on or after January 1, 1985 and that the siding will rot, buckle, discolor, deteriorate, and cause structural damage when used on the outside of a building.

Stimson has denied, and continues to deny, each and every allegation and all charges of wrongdoing or liability of any kind.

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

In a class action, one or more people called Class Representatives (in this case, Joy Gardner and Robert Blangeres are some of the Class Representatives) sue on behalf of people who have similar claims. All these people together are a Class or Class Members. One court resolves the issues for all Class Members.

### 4. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or the Defendant. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representatives and their attorneys think the settlement is best for all Class Members.

### 5. What is Forestex siding?

Forestex siding was a manufactured hardboard siding product made from wood fiber, wax, and resins. Forestex siding was manufactured both in lap (board) and panel (sheet) applications, each

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available in various external textures designed to look like conventional lumber siding. Forestex siding products were manufactured for a variety of external construction uses, including exterior siding for residential and other structures. Forestex siding was made until 1997.

## WHO IS IN THE SETTLEMENT

To see if you can get benefits from this settlement, you first have to determine if you are a Class Member.

### 6. How do I know if I am part of the settlement?

The Court has decided that everyone who fits one of these descriptions is a “Class Member”:

- a.) own property located in the states of Washington, Oregon, California, Colorado, Hawaii, Idaho, or Utah, in which Forestex siding manufactured since January 1, 1985 is incorporated and installed, and have not assigned the claim regarding the alleged damage caused by Forestex siding; or
- b.) a subsequent purchaser of such property where a former owner did not retain the right to make a claim regarding Forestex siding; or
- c.) a former owner of such property who retained the right to make a claim regarding Forestex siding, or
- d.) own or have formerly owned such property and have previously replaced damaged Forestex siding (*see* Question 21).

### 7. How can I tell whether I have Forestex Siding?

If you are not sure whether you have Forestex siding on your property, there are steps you may take to find out. You may ask the builder of your property, or you may remove a board or sheet of the siding and inspect the reverse side. A stamp with the number AHA 05 typically identifies Forestex siding. You may also take a piece of your siding to your local building supply store, which may be able to assist you. As part of the settlement claims process, you will be **required** to establish that you have or had Forestex siding on your property.

### 8. Are there exceptions to being included?

All people, associations or entities that made claims or filed lawsuits against Stimson (other than in this class action), and whose claims or lawsuits were resolved by full payment, release, arbitration or judicial action are excluded. If you previously asked to be excluded when notices were given in 2002, you are no longer a Class Member.

## 9. I'm still not sure I'm included.

If you are still not sure whether you are included, you can get help by calling toll free 1-800-427-2763, visiting [www.forestexclaims.com](http://www.forestexclaims.com), or writing with questions to Forestex Claims, P.O. Box 1371, Minneapolis, MN 55440-1371.

## THE SETTLEMENT BENEFITS—WHAT YOU GET

### 10. What does the settlement provide?

The settlement will pay all claims from Class Members for Forestex siding that an independent inspector says is damaged. A settlement fund will be set up by Stimson to pay claims and administrative costs. Stimson will first deposit \$2 million into the fund and will replenish the fund during the term of the settlement whenever the balance of the fund drops below \$1.5 million.

### 11. How much would my payment be?

The amount of your payment will be based on the qualifying damage to your Forestex siding. Payment amounts will be determined by a formula that takes into account siding damage in relation to wall size, siding square footage, the age of the siding, and whether it was properly installed. If your siding was installed more than five (5) years ago, your payment will be reduced by 3% for each year (up to a total of 27%) the siding is over five (5) years old. The payment will also be reduced if you have received any prior payments for any damage (*see* Question 15). Payments will vary but could provide money to replace some or all of the siding on a wall or your entire home.

### 12. What type of damage is covered by the settlement?

The Settlement Agreement defines Damage as follows: (1) thickness swell exceeding 18% of the average manufactured thickness of the board; (2) edge checking wherein a gauge can be inserted one half inch into the board; (3) fungal degradation which results in soft board in which moderate thumb pressure deforms or punches a hole in the board; (4) buckling or warping of the siding exceeding of ¼ inch between studs placed not more than 18 inches on center; (5) wax bleed or raised or popped fibers on 25% or more of the surface area of the board; (6) delaminated or cracked primer or primer peel or peeling, or blistering; and (7) surface welting, or swelling around nailheads. Damage does not include: (1) intentional, reckless or negligent damage to siding (unrelated to installation or maintenance); or (2) damage to siding from natural disaster including, but not limited to, fire, hurricane, flood, earthquake, earth movement or other similar events (excluding hail).

If more than 25% of a wall section qualifies as damaged, then you will receive compensation for that entire wall section. If 35% of the siding square footage of the structure actually qualifies as damaged, then you will receive compensation for the entire structure. If, using the 25% provision for finding a wall totally damaged, 75% or more of the siding on the structure is considered damaged, then you will receive compensation for the entire structure.

### 13. What type of damage is not covered by the settlement?

Damage that is caused by the following is not covered: (1) framing misalignment; (2) substantial variance from Stimson's nailing instructions; (3) permanently installed sprinkler systems that have sprayed the affected siding; (4) siding within three inches of finish grade or hardscape; (5) the absence of or improper roof/wall flashing or cutbacks; (6) failure to comply substantially with Uniform Building Code requirements in effect at the time of construction for flashing or counter-flashing, including flashing, counter-flashing, z-flashing, escutcheons, coping and use of sealant on penetrations of the siding; or (7) lack of ground crawlspace vapor barriers where there is evidence of continuing presence of standing water or swampy conditions in the crawlspace.

The independent inspector must observe that the above conditions were the only cause for the damage to your siding in order for your claim not to be paid. You will be compensated (*see* Question 11 above) if any part of the damage to a particular board is determined to be from product failure.

### 14. What if I sold—or plan to sell—my house?

If you've sold your house, you can participate in the settlement if you previously repaired or replaced damage to your siding and did not file a claim with Stimson, or if you submitted a claim which was not fully paid according to this settlement, or if you kept the right to siding damage claims when you sold the house by an agreement with the buyer. Call toll free 1-800-427-2763 or visit [www.forestexclaims.com](http://www.forestexclaims.com) to request a Claim Form. If you are planning to sell your home and keep your right to make a claim from this settlement, you must tell the buyer about this settlement and make a written agreement that you get to keep the rights to any claim for siding damage.

### 15. What if I already made a warranty claim and signed a release?

You can participate in the settlement even if you made a warranty claim in the past and signed a release—**except** if an attorney represented you and your claim was resolved by full release, an order by the court, or by arbitration. If you qualify to make a claim, the amount due you under the settlement will be reduced by the amount of any prior payments you received for the damaged siding.

#### 16. What happens to my existing warranty?

The settlement provides a seven-year claims program. The settlement replaces your warranty rights under the warranty issued with the siding. At the conclusion of the settlement, Class Members cannot file any warranty claims with Stimson.

#### 17. Can I get out of the settlement?

No. If you are a Class Member and did not previously exclude yourself, you are legally bound and can't sue Stimson about the claims in this case.

### HOW TO GET A PAYMENT

#### 18. How can I get a payment?

If you have qualifying damage, fill out a request for a Claim Form and mail it to Forestex Claims, P.O. Box 1371, Minneapolis, MN 55440-1371. You may also ask for a Claim Form by visiting [www.forestexclaims.com](http://www.forestexclaims.com) or calling the toll free number 1-800-427-2763. A claim form will be mailed to you if and when the Court approves the settlement.

#### 19. When would I get my payment?

The Court will hold a hearing on **November 12, 2004** to decide whether to approve the settlement (*see* "The Court's Fairness Hearing" section). If the Court approves the settlement after the hearing, the claims process will start. This may take time. Please be patient.

#### 20. How can I file a claim for damages that have not been repaired?

Once you get a Claim Form you need to mail it along with proof of product identification. You can prove that you have Forestex siding on your building or home by either: (1) providing a 6" by 6" sample of Forestex siding and certifying that the sample has been taken from the structure you own; (2) sending a copy of a letter or receipt from Stimson that confirms that the siding in question is Forestex siding; (3) submitting a Claim Form with a check for \$100.00 (one hundred dollars), to pay for an independent inspector to verify you have Forestex siding (this money will be refunded to you if you have Forestex siding); (4) sending an invoice or warranty, along with photographs of Forestex siding on the exterior walls of your building or home; or (5) submitting a photograph showing the Stimson production identification stamp on the back of your siding.

### **21. What if I already repaired my siding?**

You can file a claim for any repairs you have already made to your Forestex siding. Once you get a Claim Form you need to mail it along with proof that your siding was repaired. You need to show that (1) the siding was Forestex siding; (2) the siding was damaged, (3) the damage was repaired or replaced, and (4) the costs of any such repair or replacement work. You need to submit one of the following with your Claim Form: photographs showing damaged Forestex siding and contracts, invoices, bills or other documents reflecting the repairs to the siding, **or** sworn statements from third persons in the business of inspecting or making repairs attesting to the inspection, damage and repairs. Claims may not be made for painting alone; only if siding has been replaced.

### **22. What if my siding becomes damaged in the future?**

You are not limited to making a single claim during the life of the settlement. If you experience new Damage, you may make additional claims up until seven (7) years after the Court grants final approval and any appeals are resolved.

## **THE LAWYERS REPRESENTING YOU**

### **23. Do I have a lawyer in this case?**

The Court appointed the following law firms to represent you together as co-lead “Class Counsel”: Sandler Ahern & McConaughy, PLLC of Seattle, WA; Cunningham, Bounds, Yance, Crowder & Brown of Mobile, AL; Levy Ram & Olson of San Francisco; and Berding & Weil LLP of San Francisco, CA.

You do not have to pay Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense to “appear” for you in Court.

### **24. How will the lawyers be paid?**

Class Counsel will ask the Court to approve payment to them of \$12.85 million in attorneys’ fees plus \$900,000 in expenses, as decided by a neutral “arbitrator,” for their work on behalf of you and other Class Members in obtaining the settlement. Stimson will separately pay these attorneys’ fees and expenses. Stimson will also separately pay the costs to administer the settlement. Stimson will also separately pay the class representatives and other homeowners who assisted in the prosecution of the action a total of \$75,000. These amounts will not reduce the payments distributed to the Class Members.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

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

If you're a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. You may also tell the Court why you are in favor of the settlement. The Court will consider your views. To object, you must send a letter saying that you object to *Gardner v. Stimson Lumber Company*. Be sure to include the case number (No. 00-2-17633-3SEA), your name, address, telephone number, signature, and the reasons why you object to the settlement. Send the objection to each of these three places postmarked no later than **November 5, 2004**:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court 516 3 <sup>rd</sup> Ave. E-609 Seattle, WA 98104-2386	Bennet A. McConaughy Sandler Ahern & McConaughy PLLC 1200 Fifth Ave., Suite 1900 Seattle, WA 98101-3135	Kirk J. Wolden Gurnee Wolden & Daniels LLP 2240 Douglas Blvd Ste 150 Roseville, CA 95661-3875

## 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, but you don't have to.

### 26. When and where will the Court decide whether to approve the settlement?

The Court has scheduled a Fairness Hearing at 9:00 a.m. on Friday, **November 12, 2004** at the King County Superior Court, Room W928, 516 Third Ave., Seattle, WA. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections against the settlement, or comments in favor of it, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. After the hearing, the Court will make its decisions. We do not know how long this will take.

### 27. Do I have to come to the hearing?

No. Class Counsel will answer questions that the Court may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written comments on time, the Court will consider them. You may also pay your own lawyer to attend, but it's not necessary.

**QUESTIONS? CALL 1-800-427-2763 OR VISIT [www.forestexclaims.com](http://www.forestexclaims.com).**

## 28. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intention to Appear in *Gardner v. Stimson Lumber Company*”. Be sure to include the case number (No. 00-2-17633-3SEA), your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than **November 5, 2004**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel at the three addresses in question 25.

## IF YOU DO NOTHING

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

If you do nothing, and if you don’t file a Claim Form now or in the future, you will not get a payment from this settlement. If you didn’t previously exclude yourself, you are legally bound and can’t sue Stimson about the legal claims in this case.

## GETTING MORE INFORMATION

## 30. How do I get more information?

This notice only summarizes the proposed settlement. More details are in a longer Settlement Agreement that you can get at [www.forestexclaims.com](http://www.forestexclaims.com), by calling 1-800-427-2763, or by writing to: Forestex Claims, P.O. Box 1371, Minneapolis, MN 55440-1371.