



The New Condo Bill - EHB 1848

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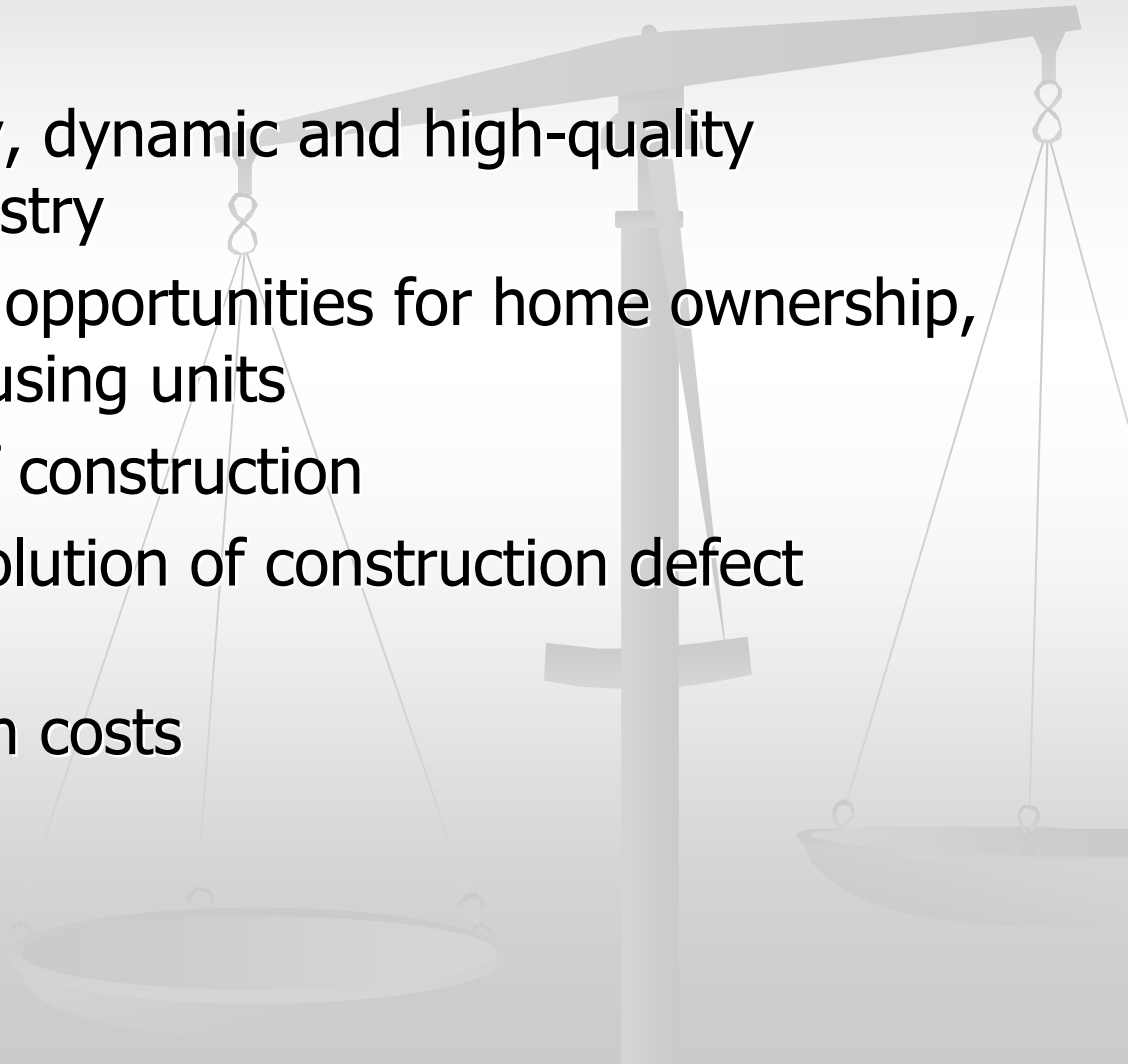
The Committee

- **Background and legislative climate**
 - Water penetration and insurance industry reaction
 - Previous legislation
- **Composition**



The Committee

Goals

- Encourage healthy, dynamic and high-quality condominium industry
 - Provide continued opportunities for home ownership, and affordable housing units
 - Improve quality of construction
 - Promote early resolution of construction defect disputes
 - Reduce transaction costs
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Effective Date

August 1, 2005

- Permitted on or after
- Notice Given or Lawsuit Commenced on or after

Two Main Components of the New Law

- Building Envelope Design and Inspections
- Dispute Resolution



Building Enclosure Design and Inspections



- Purpose:
 - Reduce water penetration problems by improving building envelope design details
 - Fix construction problems early, and before units are sold, by inspecting during the course of construction
- Inspection requirements apply to “multiunit residential buildings”

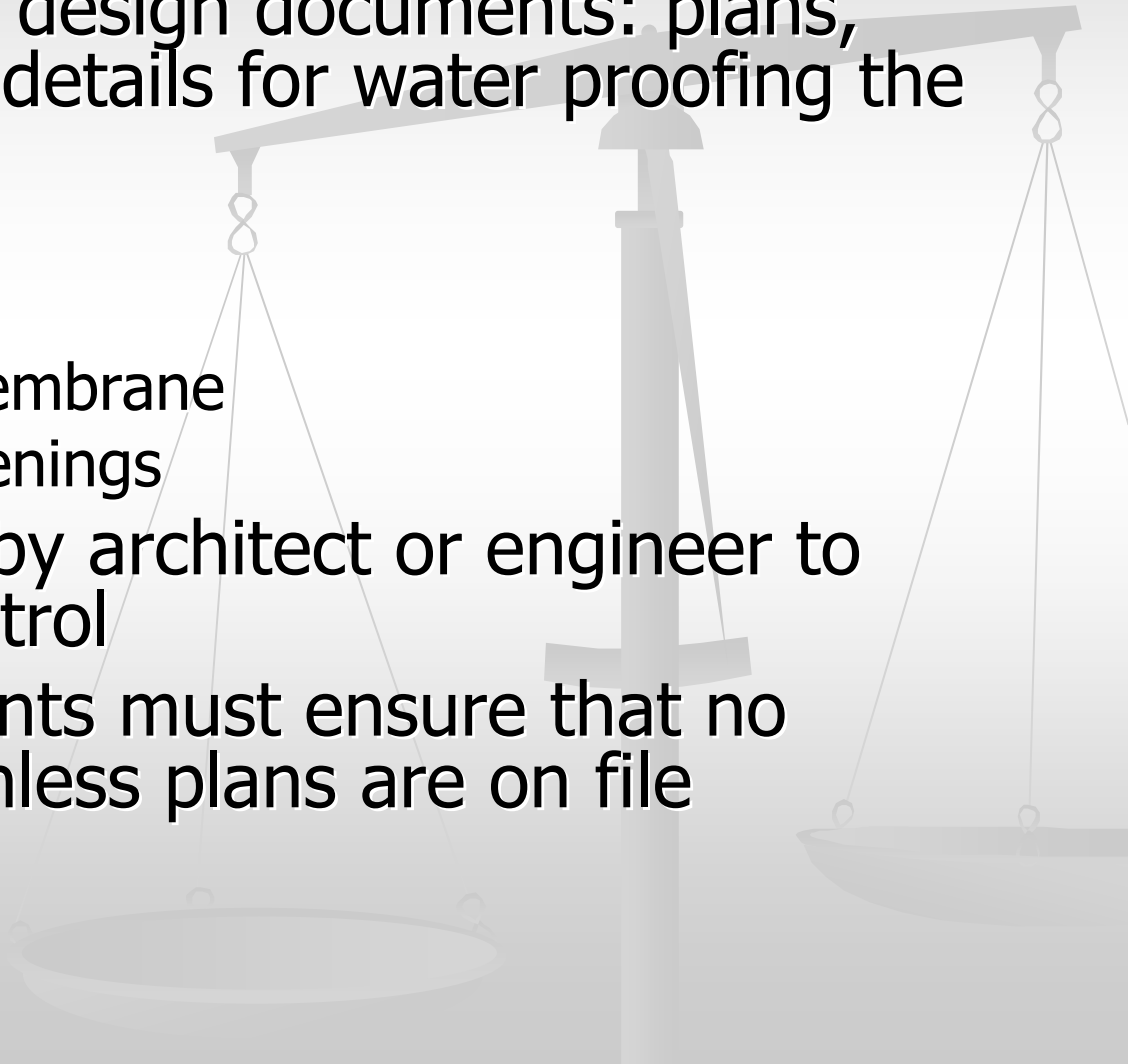
Applicability – Multiunit Residential Building

- “A building containing more than two attached dwelling units”
 - Not just condominiums
 - Applies to conversions
 - Opt in and opt out provisions for developers
- Applies to rehabilitative reconstruction
 - Reconstruction/repair work that exceeds 5% of the assessed value of the building

Building Enclosure

- Beginning August 1, 2005, building permit applications must include building enclosure design documents
- Building enclosure: the parts of the building that separate the outside environment from the inside.
 - Roofs
 - Windows, walls and doors
 - Decks and balcony support columns
 - Other penetrations through exterior walls that weatherproof the building

Design Documents

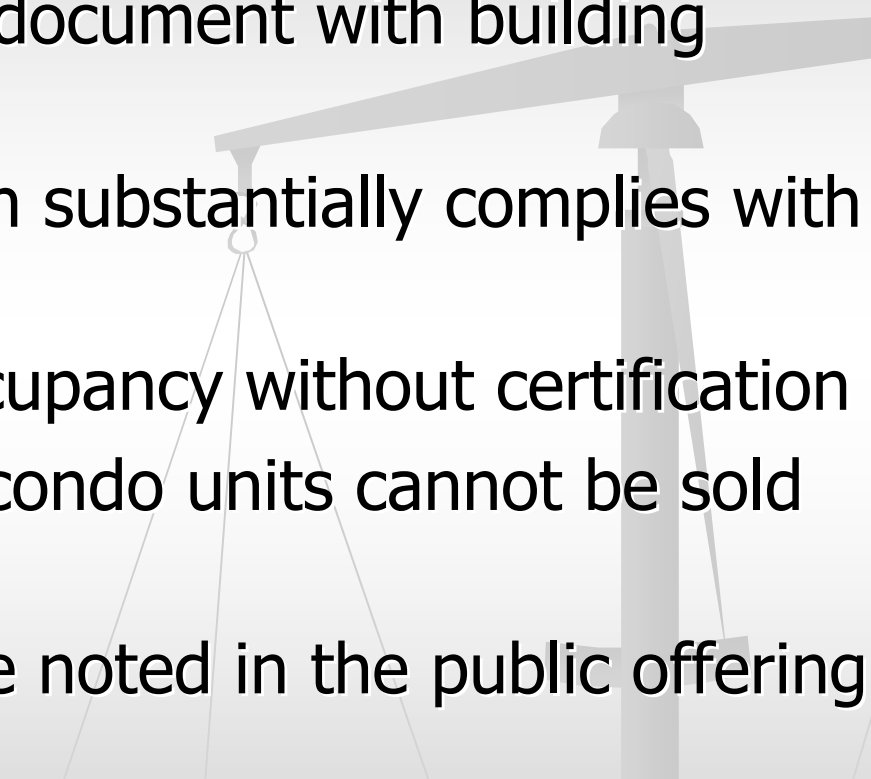
- Building enclosure design documents: plans, specifications and details for water proofing the building
 - Flashing
 - Roof and eaves
 - Water-resistive membrane
 - Details around openings
 - Must be stamped by architect or engineer to ensure quality control
 - Building departments must ensure that no permit is issued unless plans are on file
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Inspections

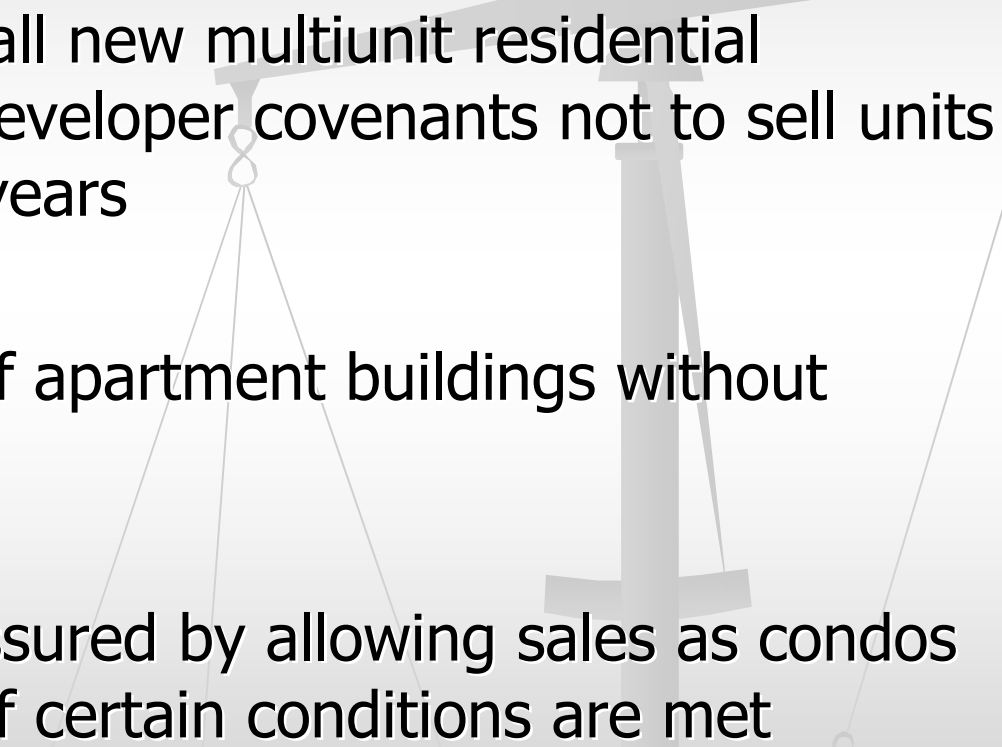


- Building enclosure inspections are required during initial construction and rehabilitative construction starting August 1
- Must be performed by a qualified building inspector
 - Substantial and verifiable training and experience in building enclosure design and construction
 - Independent
- Scope of Inspection
 - Window water penetration testing
 - Periodic review of building enclosure to make sure that construction complies with design documents

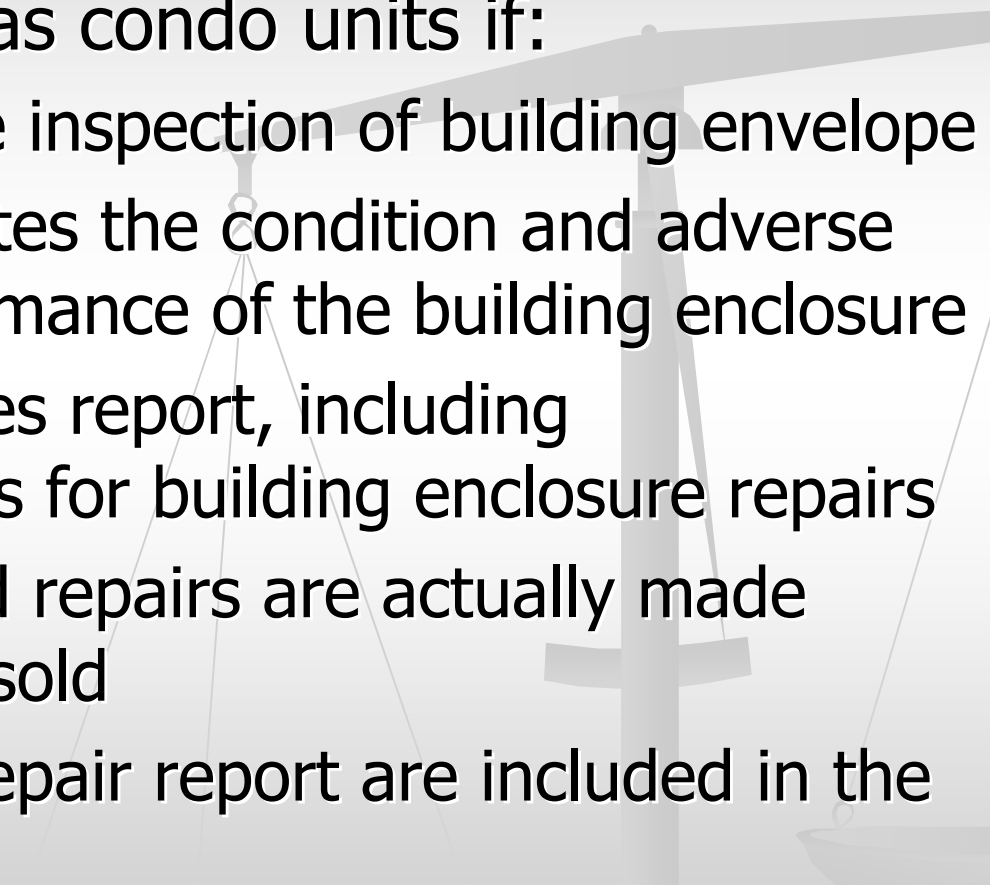
Inspection Certification

- Inspector must file document with building department
 - As-built construction substantially complies with design documents
 - No certificate of occupancy without certification
 - Newly constructed condo units cannot be sold without inspection
 - Compliance must be noted in the public offering statement
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Developer Opt Out Provisions

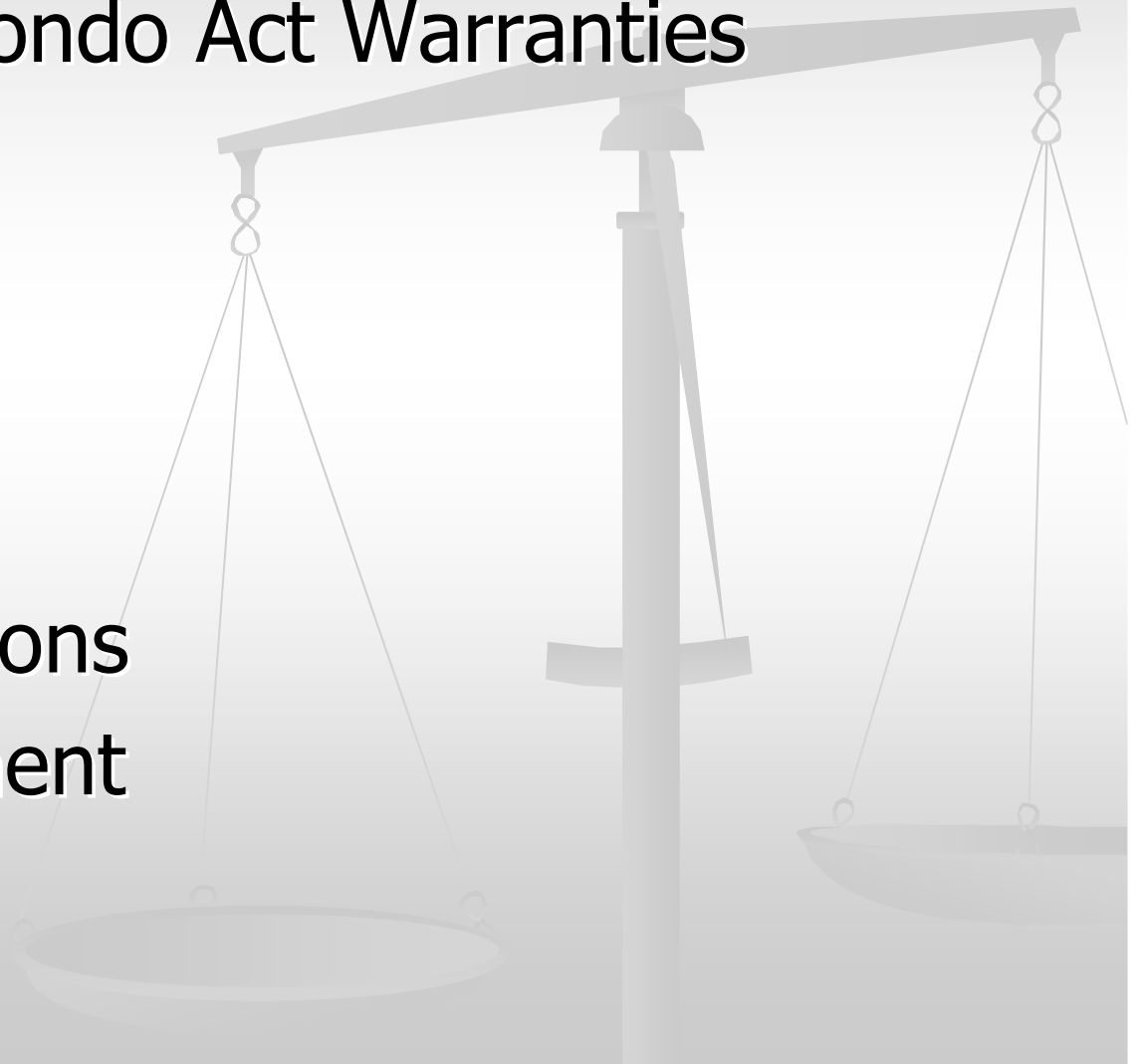
- Inspections apply to all new multiunit residential construction unless developer covenants not to sell units as condo units for 5 years
 - Allows construction of apartment buildings without inspection
 - Market flexibility is assured by allowing sales as condos within 5 year period if certain conditions are met
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Inspection of Conversion Condos

- Units can be sold as condo units if:
 - There is intrusive inspection of building envelope
 - Inspector evaluates the condition and adverse impact on performance of the building enclosure
 - Inspector provides report, including recommendations for building enclosure repairs
 - All recommended repairs are actually made before units are sold
 - Inspection and repair report are included in the POS
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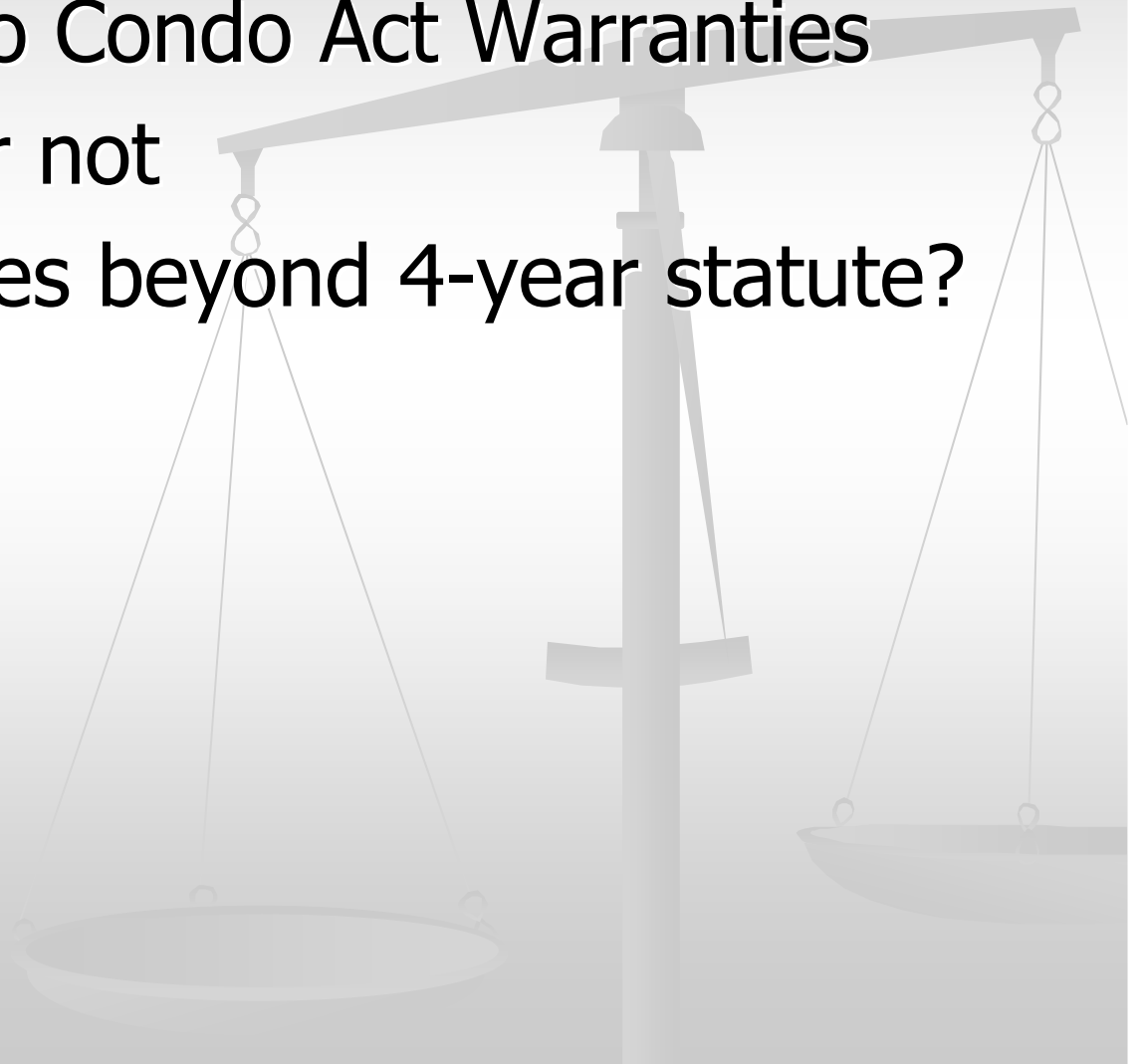
Dispute Resolution

- Applicability - Condo Act Warranties
- Arbitration
- Case Schedule
- Mediation
- Neutral Expert
- Payment Provisions
- Offers of Judgment



Applicability

- Cases relating to Condo Act Warranties
- Whether pled or not
- What about cases beyond 4-year statute?



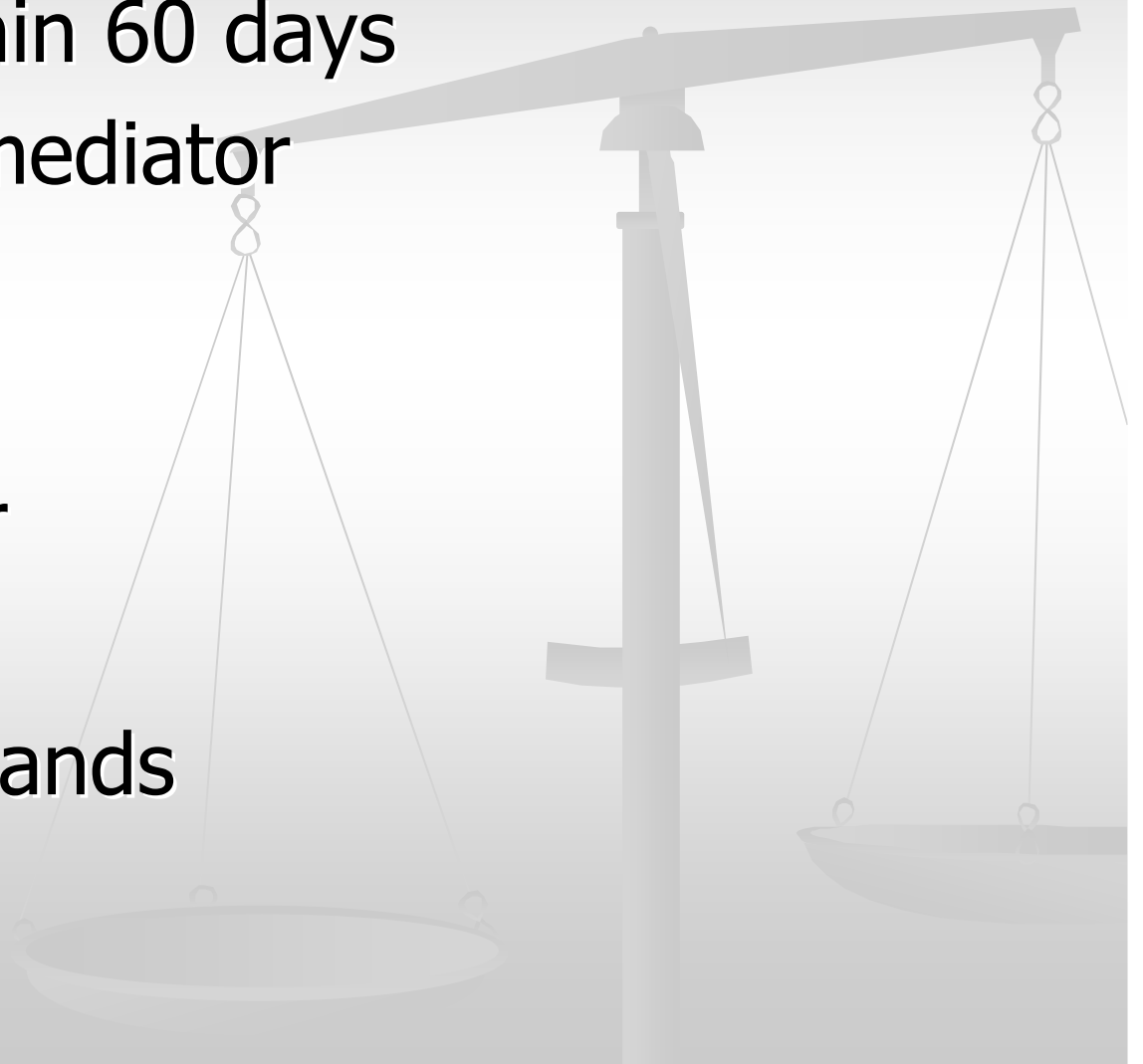
Arbitration



- Any primary party can compel
- Demand early in case - 30 to 90 days
- Within 14 months
- Arbitrators experienced in construction defect disputes
- Trial de novo
 - If award is less, must pay other side's costs and fees
 - If award is greater court determines costs and fees

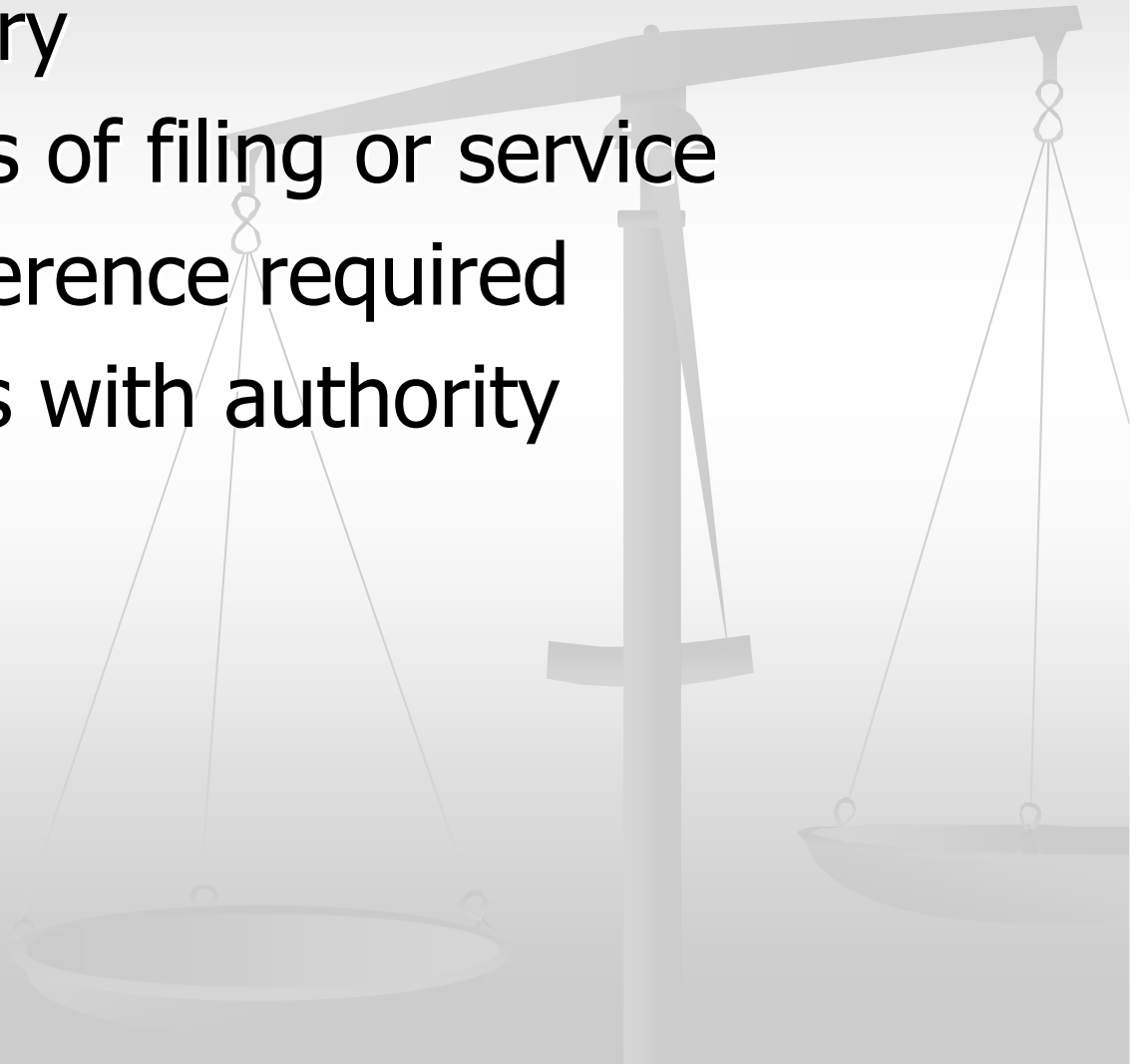
Case Schedule

- Conference within 60 days
- Mediation and mediator
- Arbitrator
- Investigations
- Scopes of repair
- Cost estimates
- Settlement demands



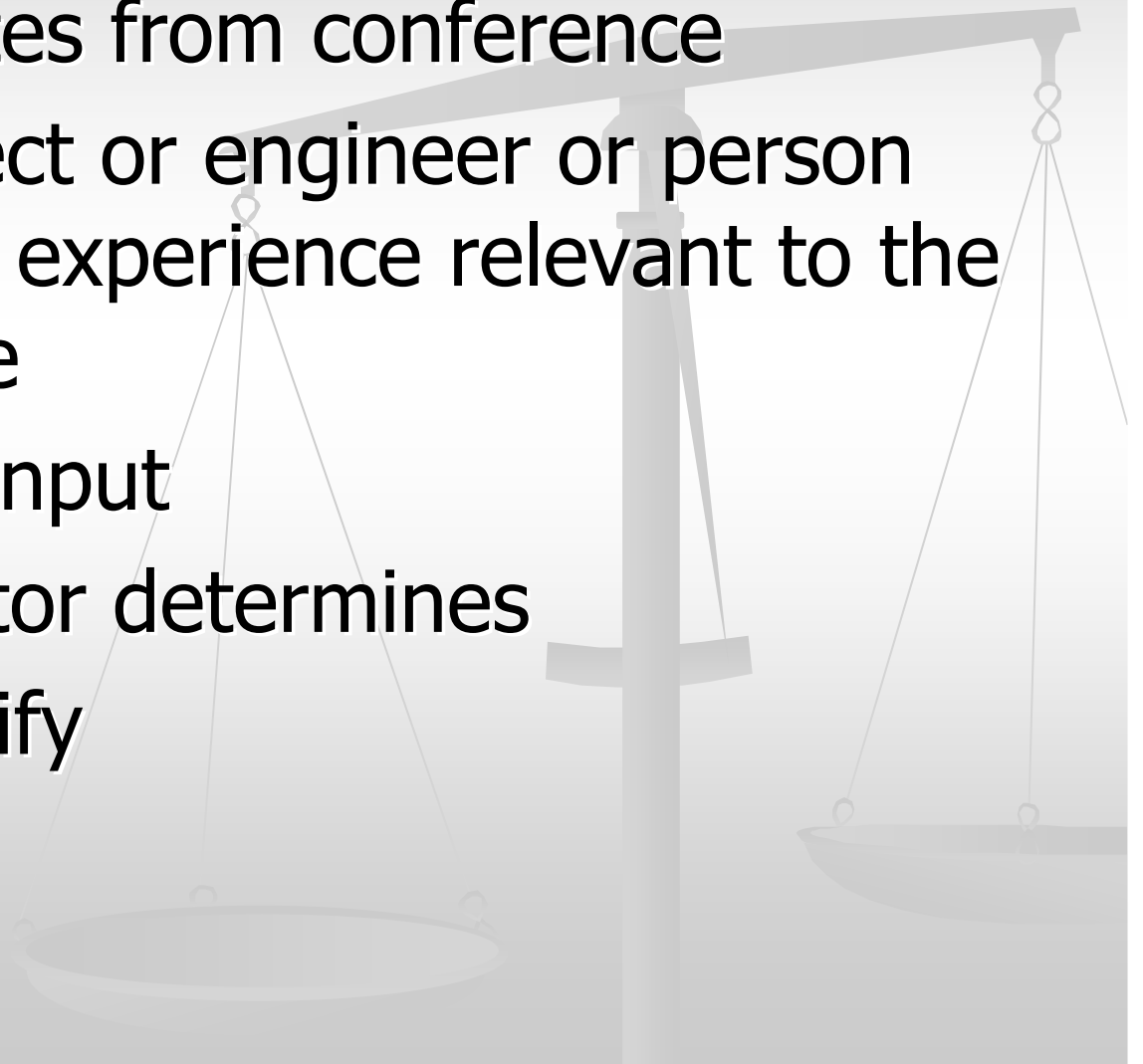
Mediation

- One is mandatory
- Within 7 months of filing or service
- Good faith conference required
- Decision makers with authority



Neutral Experts

- Based on disputes from conference
- Licensed architect or engineer or person with substantial experience relevant to the issues in dispute
- All parties give input
- Court or arbitrator determines
- Expert may testify



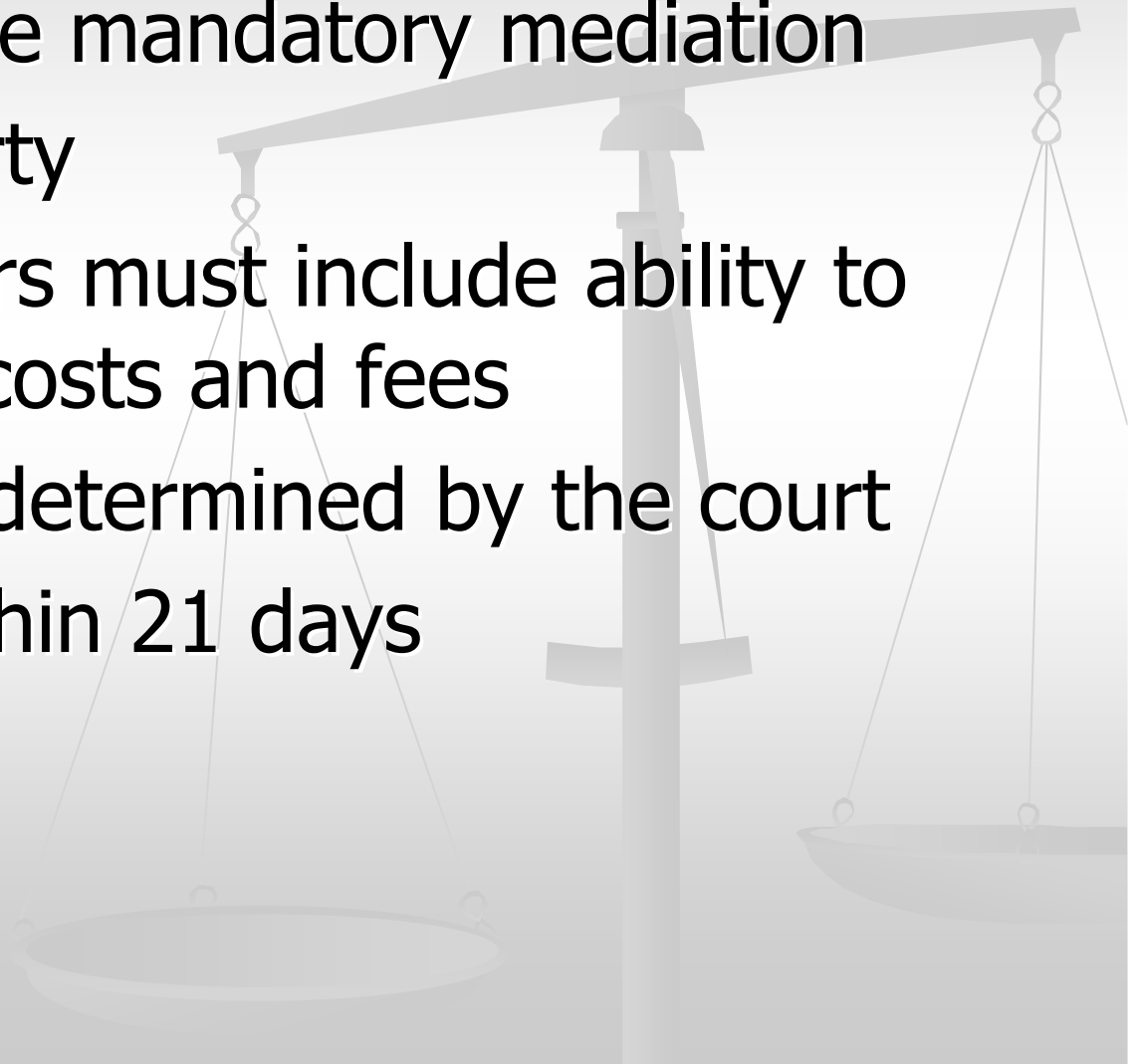
Payment Provisions



- If permitted before August 1, 2005
 - Party demanding arbitration *pays* for arbitration and mediation
 - Party requesting neutral expert *pays*
- If permitted on or after August 1, 2005
 - Party demanding arbitration *advances* fees for arbitration and arbitrator and mediator
 - Party requesting neutral expert *advances* fees
 - Fees and costs *advanced* are subject to shift based on prevailing party rule in Offers of Judgment

Offers of Judgment

- 60 days from the mandatory mediation
- Any primary party
- Declarants' offers must include ability to pay judgment, costs and fees
- Fees and costs determined by the court
- Must accept within 21 days



Offers of Judgment – Fee Shifting

- If association accepts, it is prevailing party
 - Court *shall* award fees and costs to association
- If association rejects and does no better, declarant is prevailing party
 - Court *must* award fees and cost to declarant
 - Subject to 5% cap

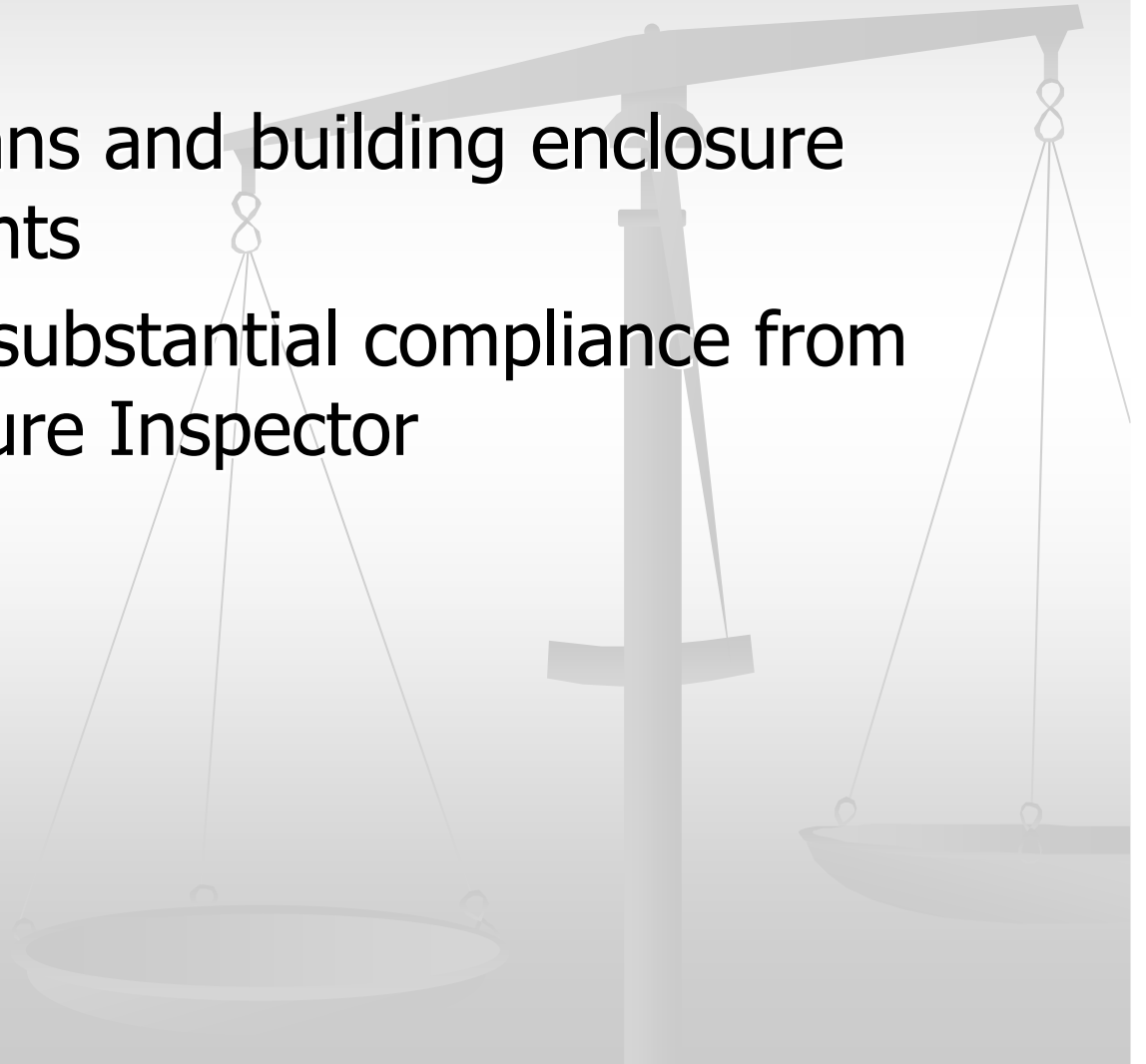
Impact on Association Managers

- New Projects
- Conversions
- Repairs



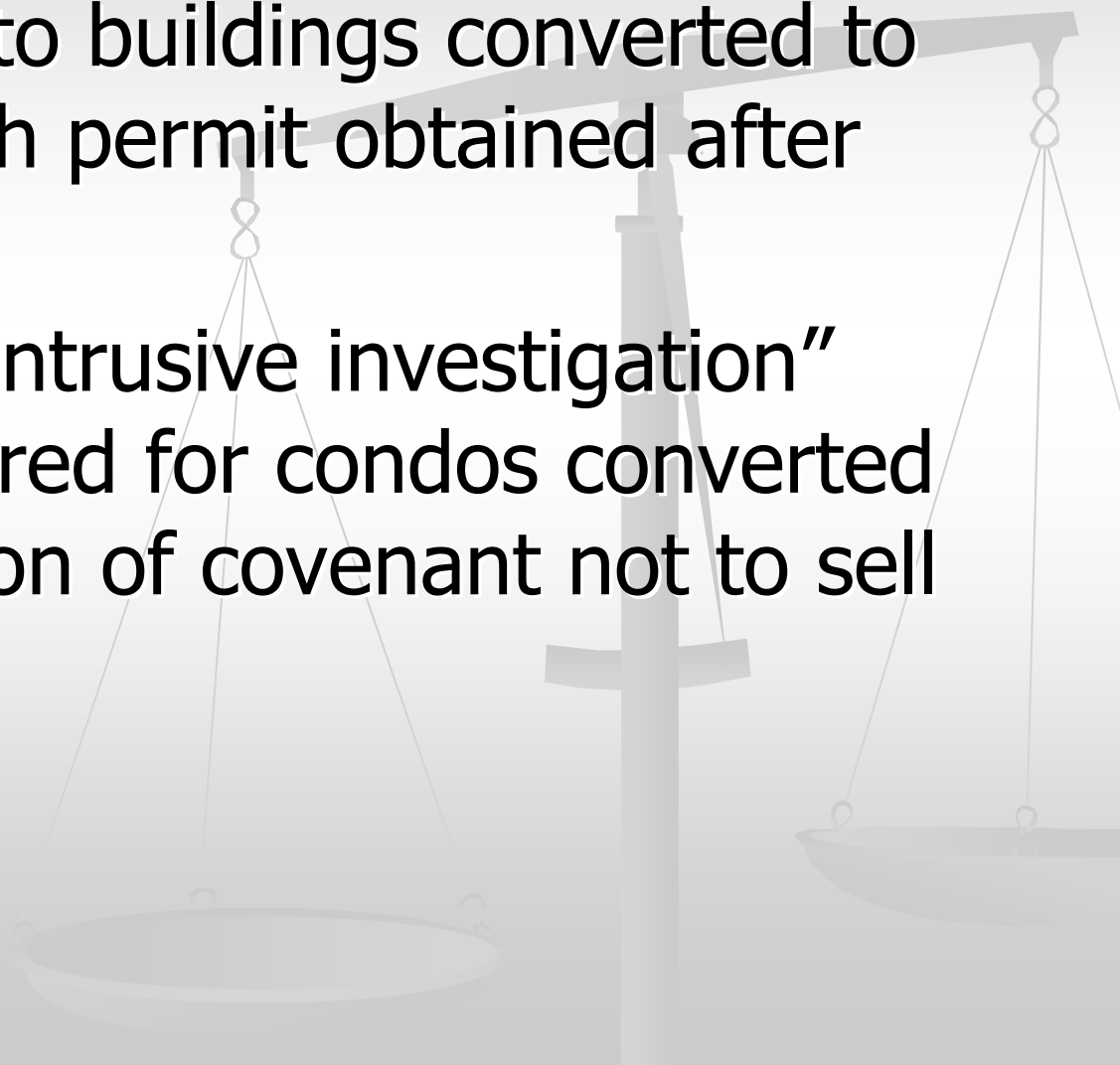
New Projects

- Ask for:
 - Copies of all plans and building enclosure design documents
 - Certification of substantial compliance from Building Enclosure Inspector



Conversion Condominiums

- Statute applies to buildings converted to condos for which permit obtained after August 1, 2005
- More rigorous “intrusive investigation” inspection required for condos converted prior to expiration of covenant not to sell



Repairs



- Are repairs subject to new law? (Total repair cost exceeds 5% of assessed value)
- Factor in costs for:
 - Building envelope design documents
 - Inspections
 - Window testing
- Factor in additional time for permits

Q&A



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Thank you for attending!