



The New Condo Bill - EHB 1848

Presented by:

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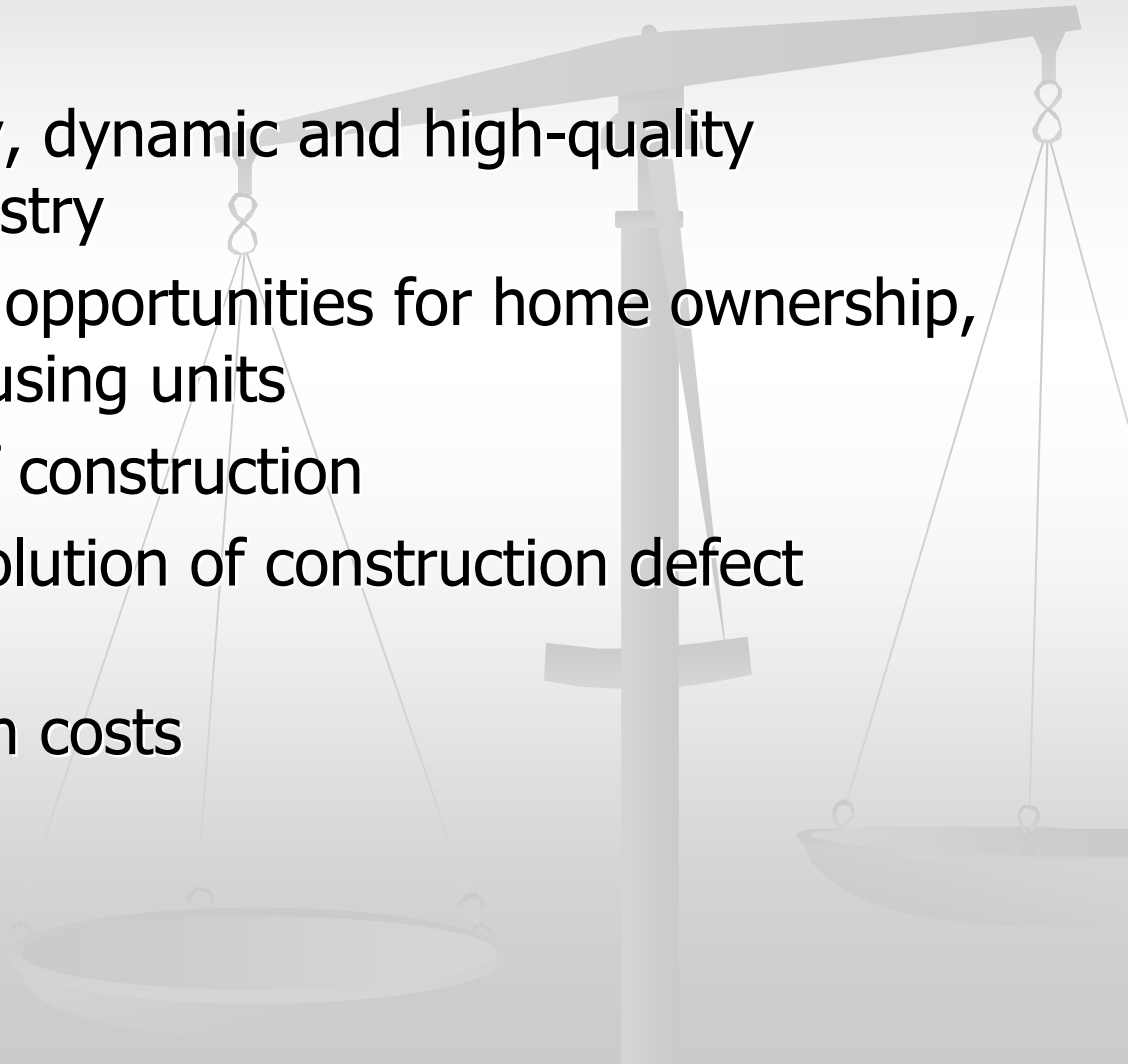
The Committee

- **Background and legislative climate**
 - Rising insurance premiums
 - Increase in condominium construction defect claims
 - Previous legislation
- **Composition**

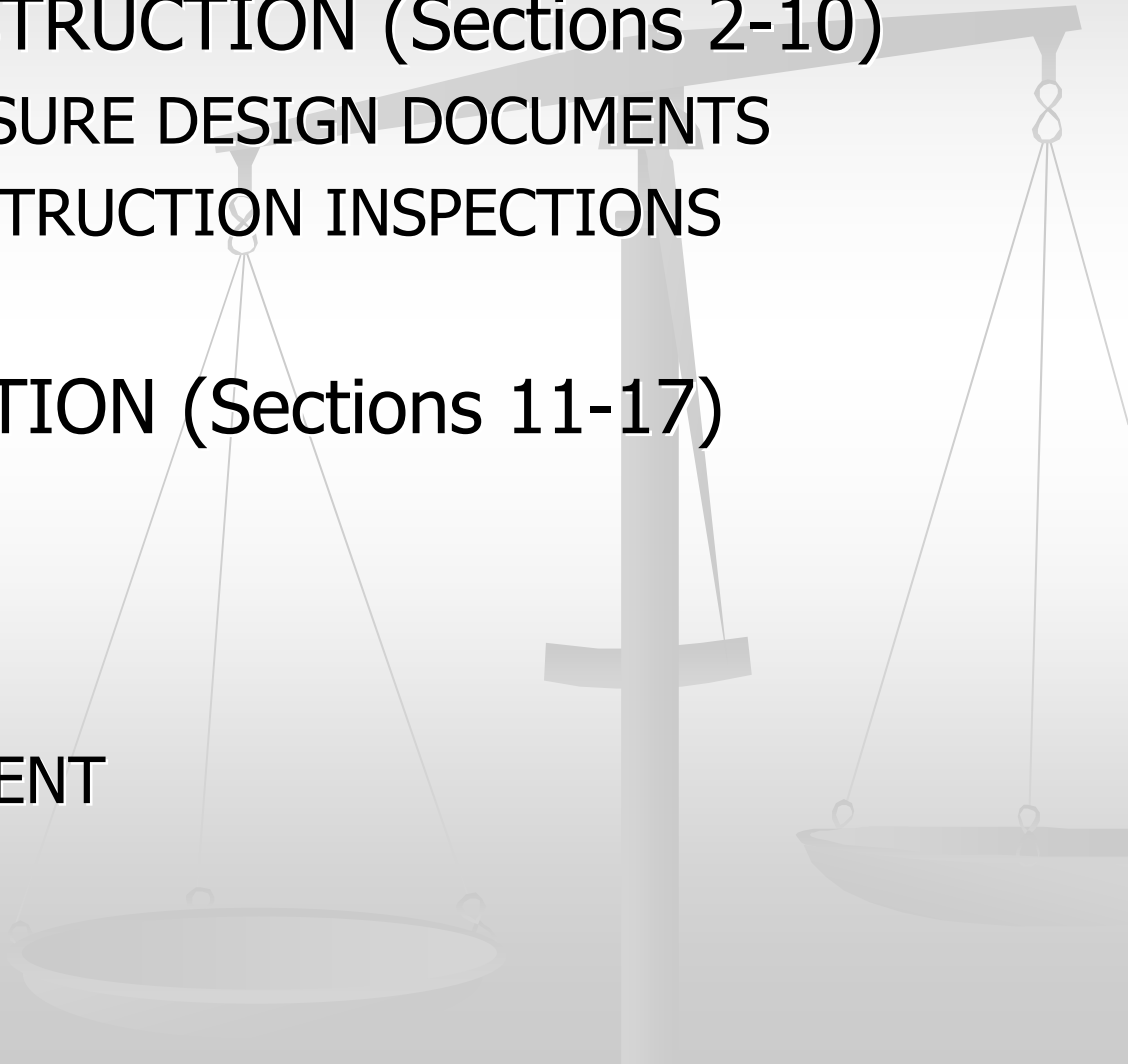


The Committee

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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TWO MAIN COMPONENTS OF NEW LAW

- COURSE OF CONSTRUCTION (Sections 2-10)
 - BUILDING ENCLOSURE DESIGN DOCUMENTS
 - COURSE OF CONSTRUCTION INSPECTIONS
 - DISPUTE RESOLUTION (Sections 11-17)
 - ARBITRATION
 - CASE SCHEDULE
 - NEUTRAL EXPERT
 - OFFER OF JUDGMENT
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Effective Date: August 1, 2005

Different Triggers For Each Component

■ Sections 2-10

- New Construction: Permitted issued on or after effective date
- Conversion: POS Delivered on or after effective date

■ Sections 11-18

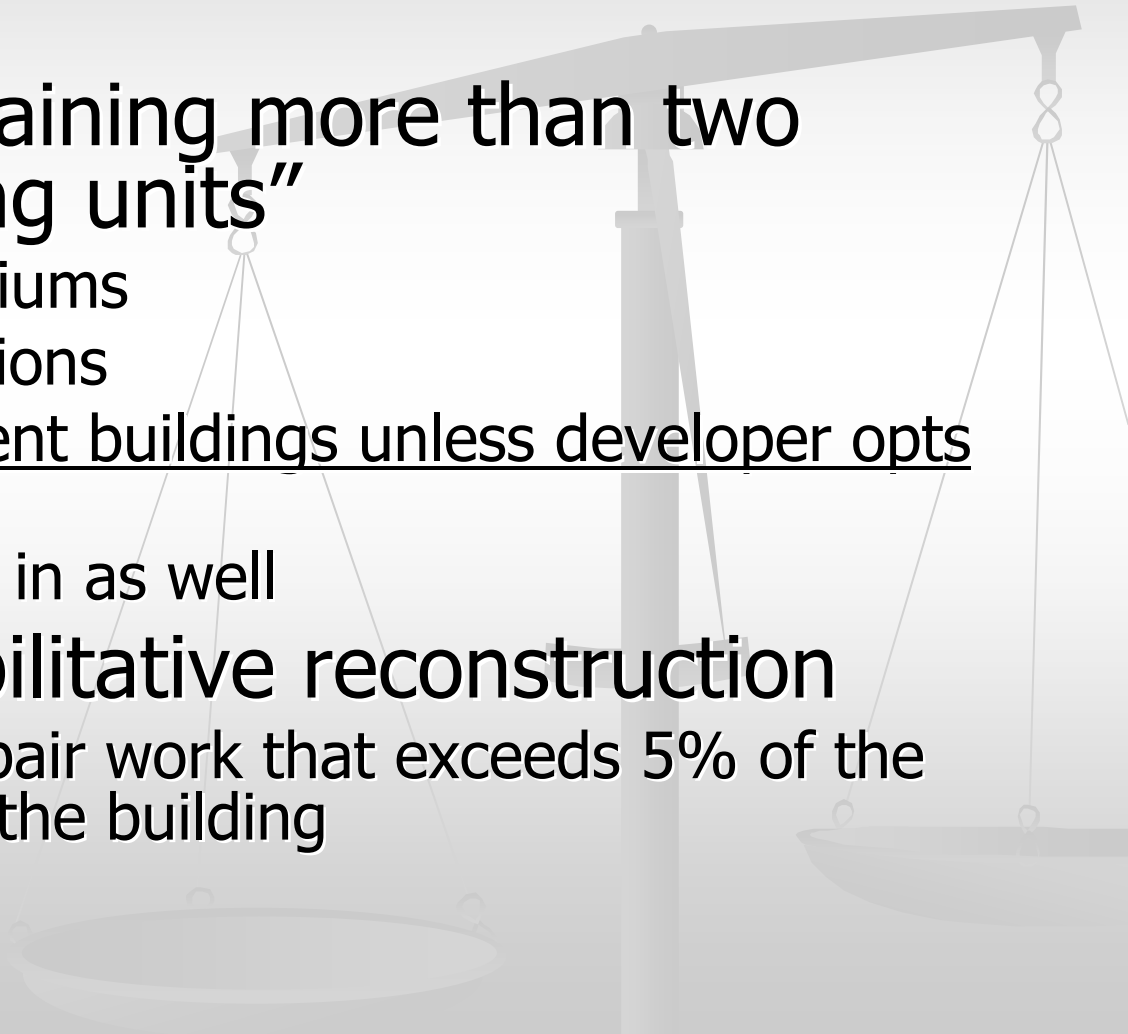
- RCW 64.50 notice served or Lawsuit Commenced on or after effective date
- Effective date is irrelevant if developer fails to comply with Sections 7 and 10.

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”

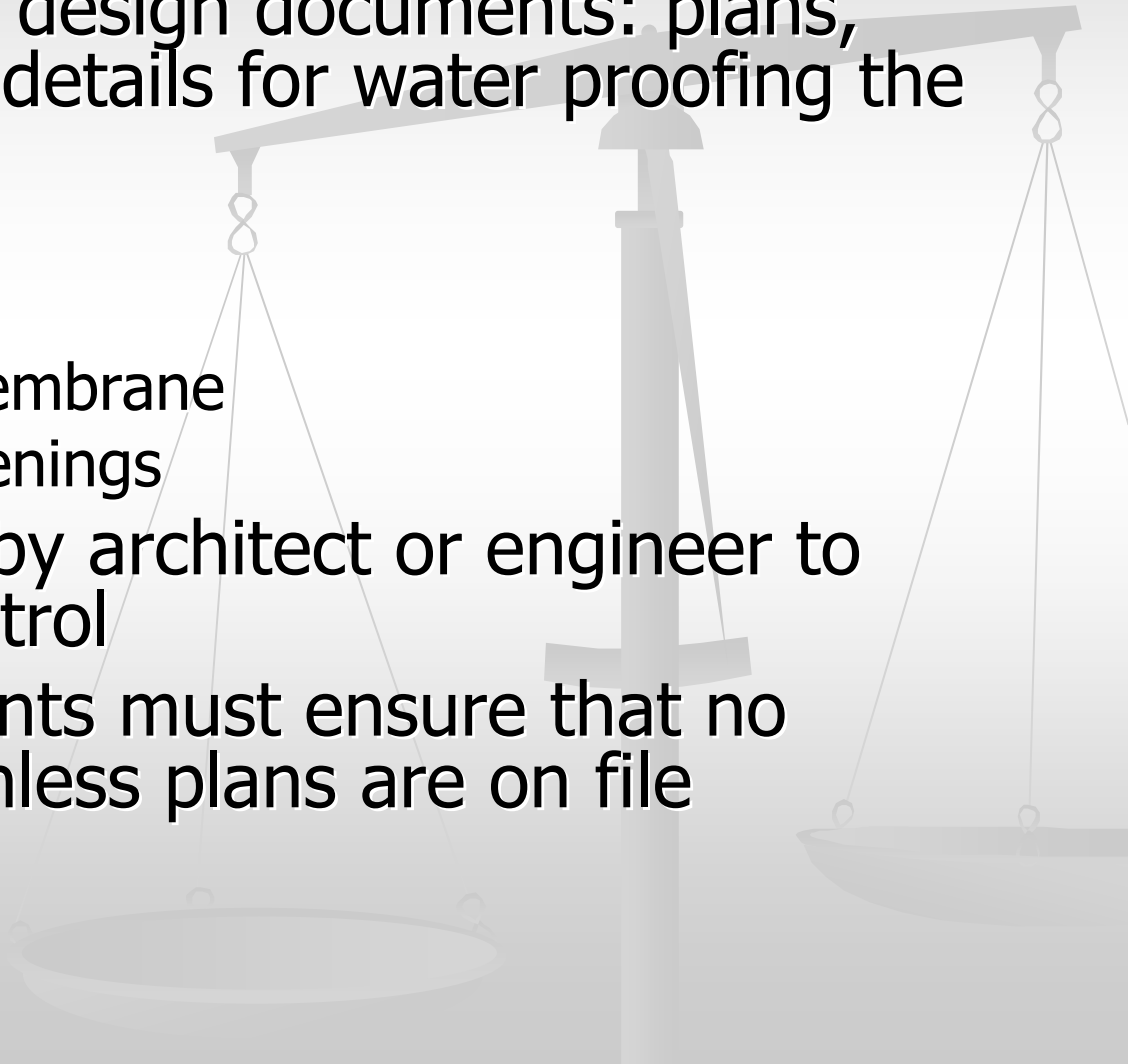
Applicability – Multiunit Residential Building

- “A building containing more than two attached dwelling units”
 - Not just condominiums
 - Applies to conversions
 - Applies to apartment buildings unless developer opts out
 - Developer can opt in as well
 - Applies to rehabilitative reconstruction
 - Reconstruction/repair work that exceeds 5% of the assessed value of the building
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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

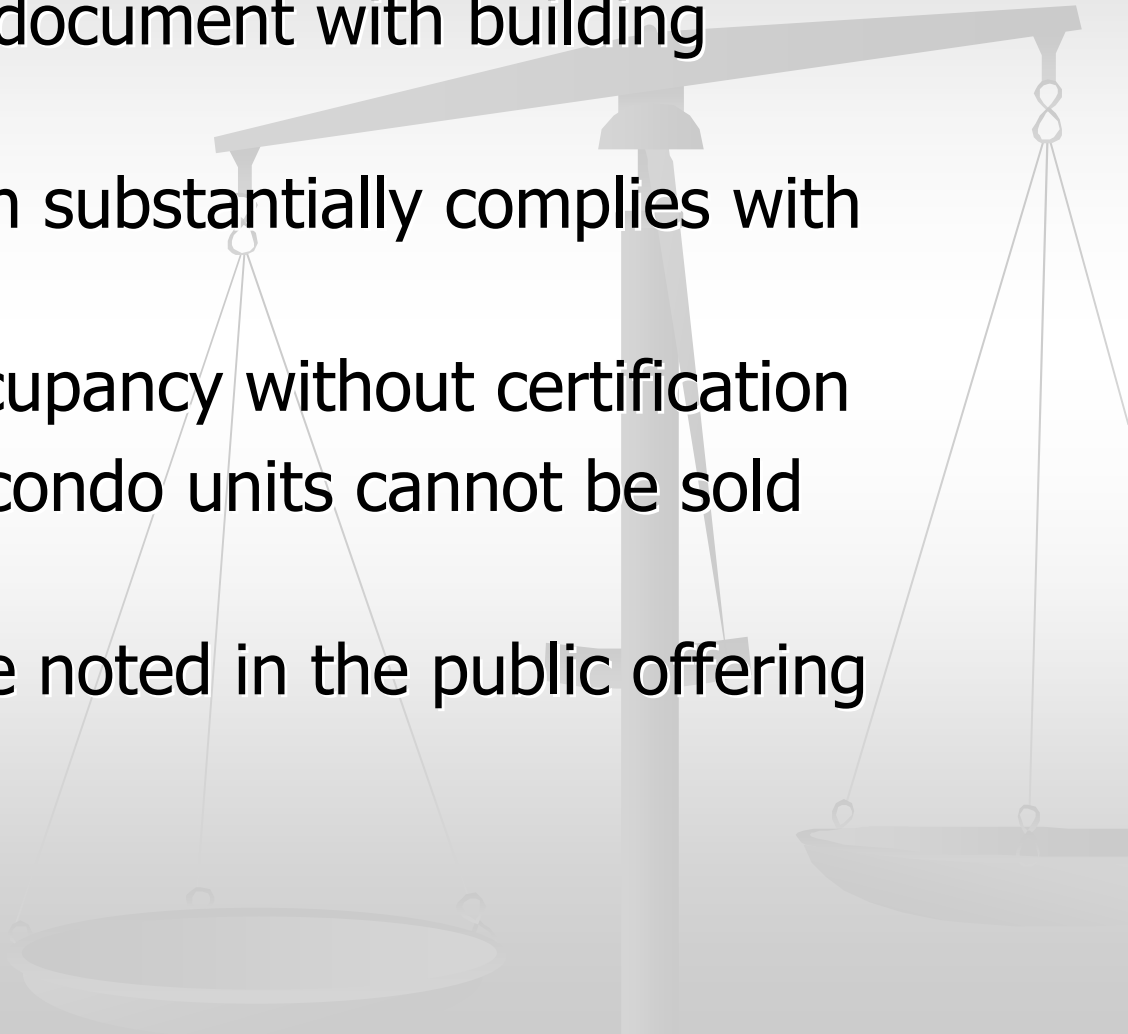
- Building enclosure design documents: plans, specifications and details for water proofing the building
 - Flashing
 - Roof and eaves
 - Water-resistive membrane
 - Details around openings
 - Must be stamped by architect or engineer to ensure quality control
 - Building departments must ensure that 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

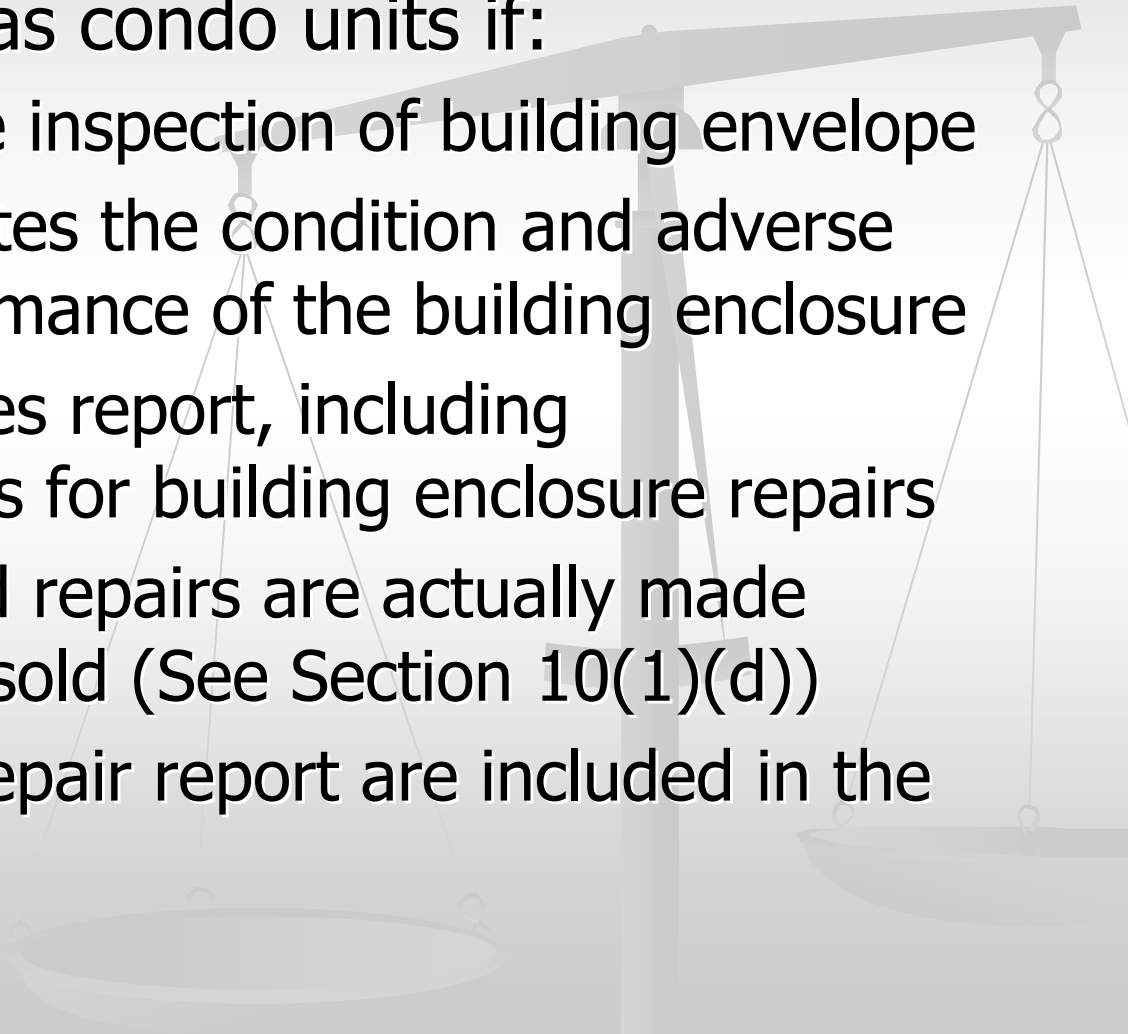
Inspection Certification

- 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

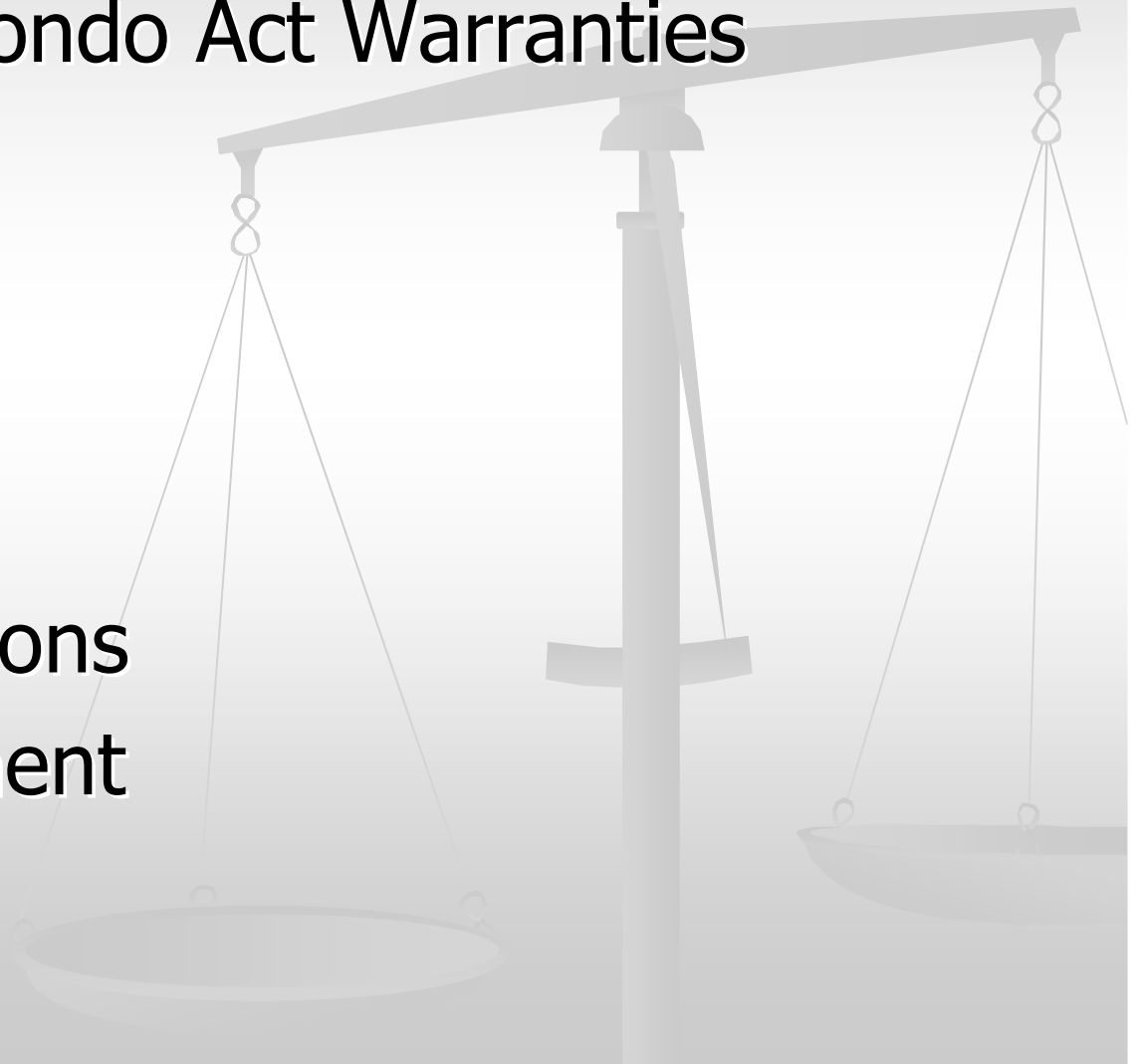
- Inspections apply to all new multiunit residential construction unless developer covenants not to sell units as condo units for 5 years
 - Allows construction of apartment buildings without inspection
 - Can convert apartments to condo's after 5 year period if certain conditions are met
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Inspection 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 (See Section 10(1)(d))
 - Inspection and repair report are included in the POS
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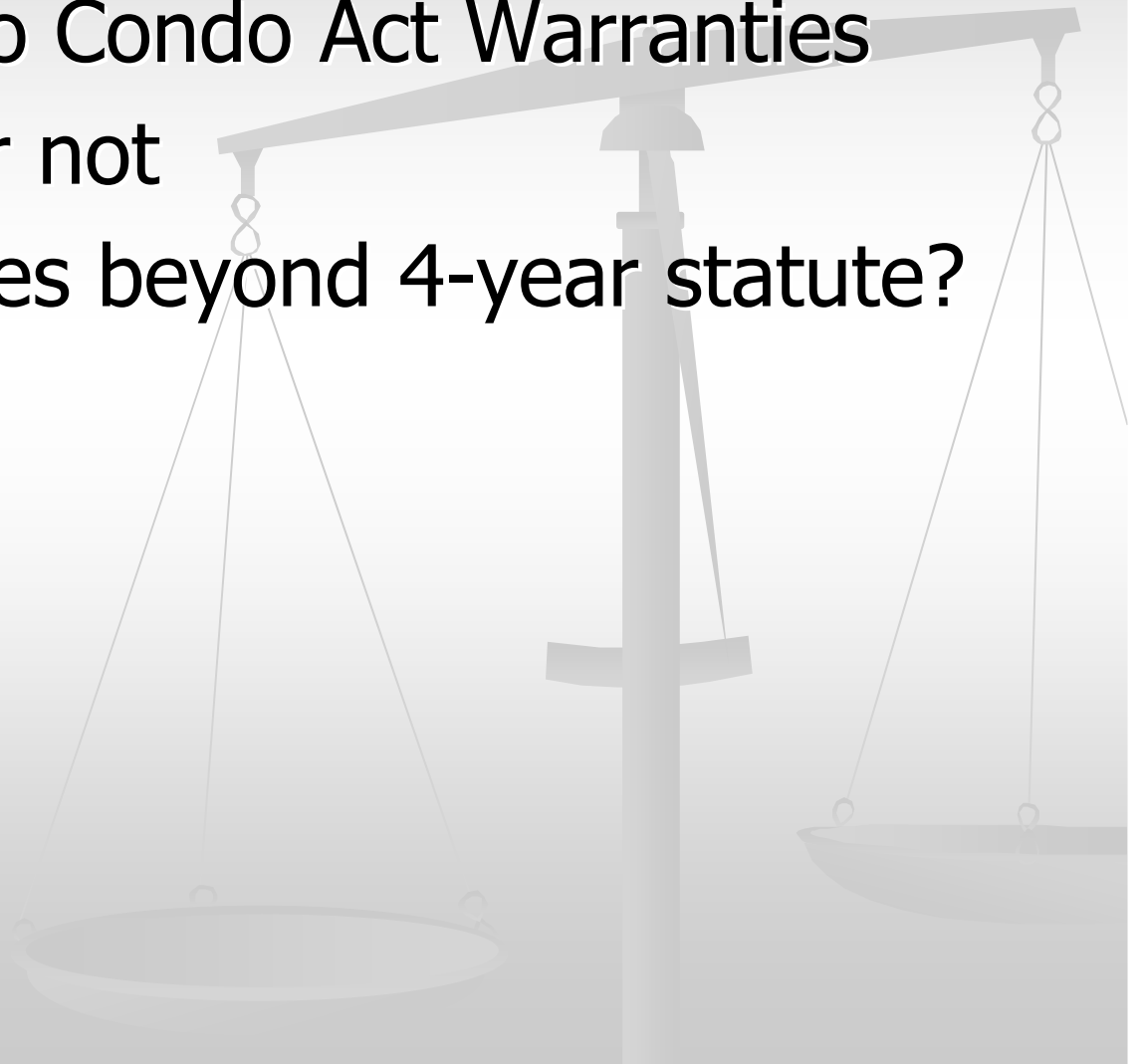
Dispute Resolution

- 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?



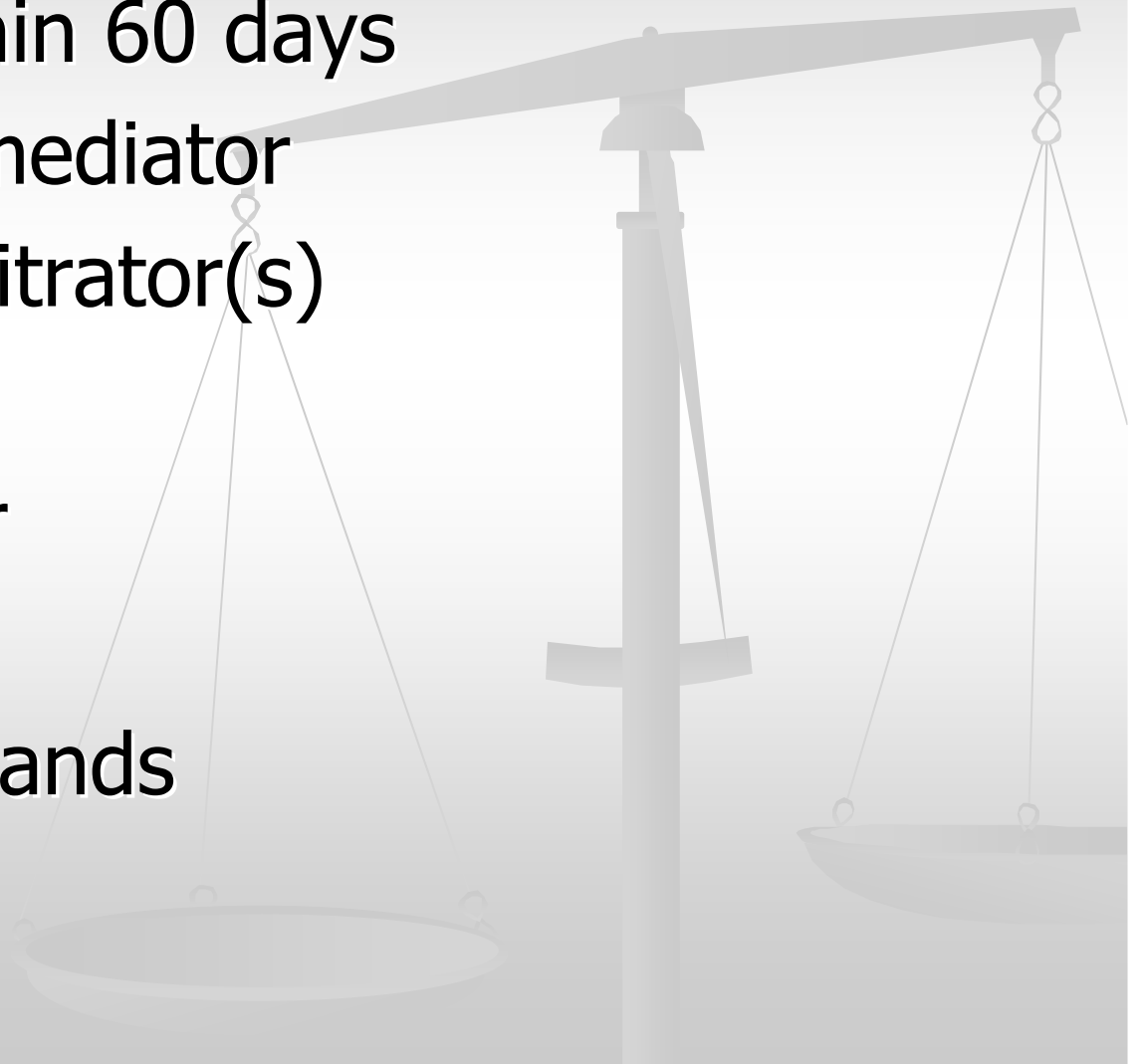
Arbitration



- 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

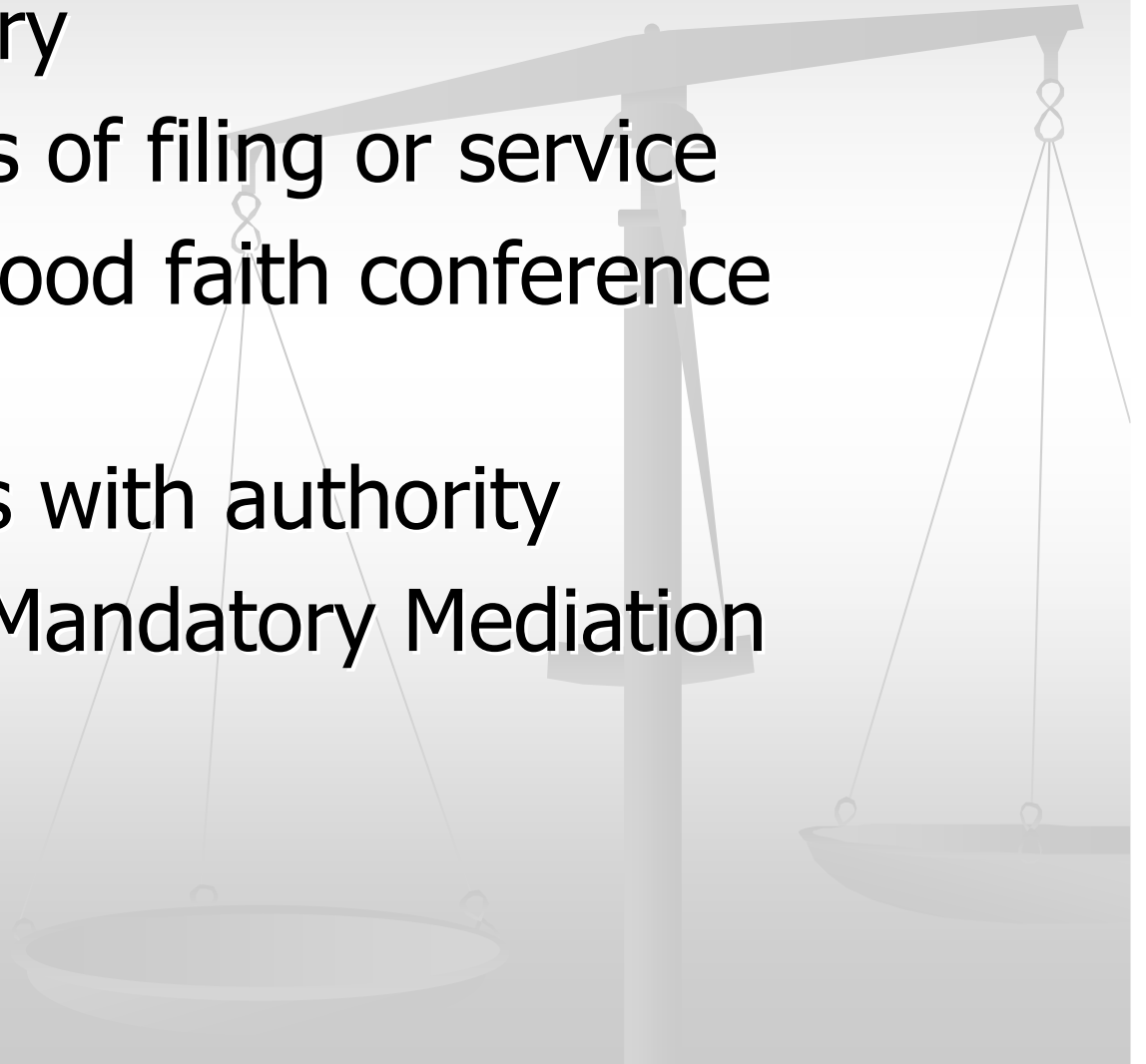
Case Schedule

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



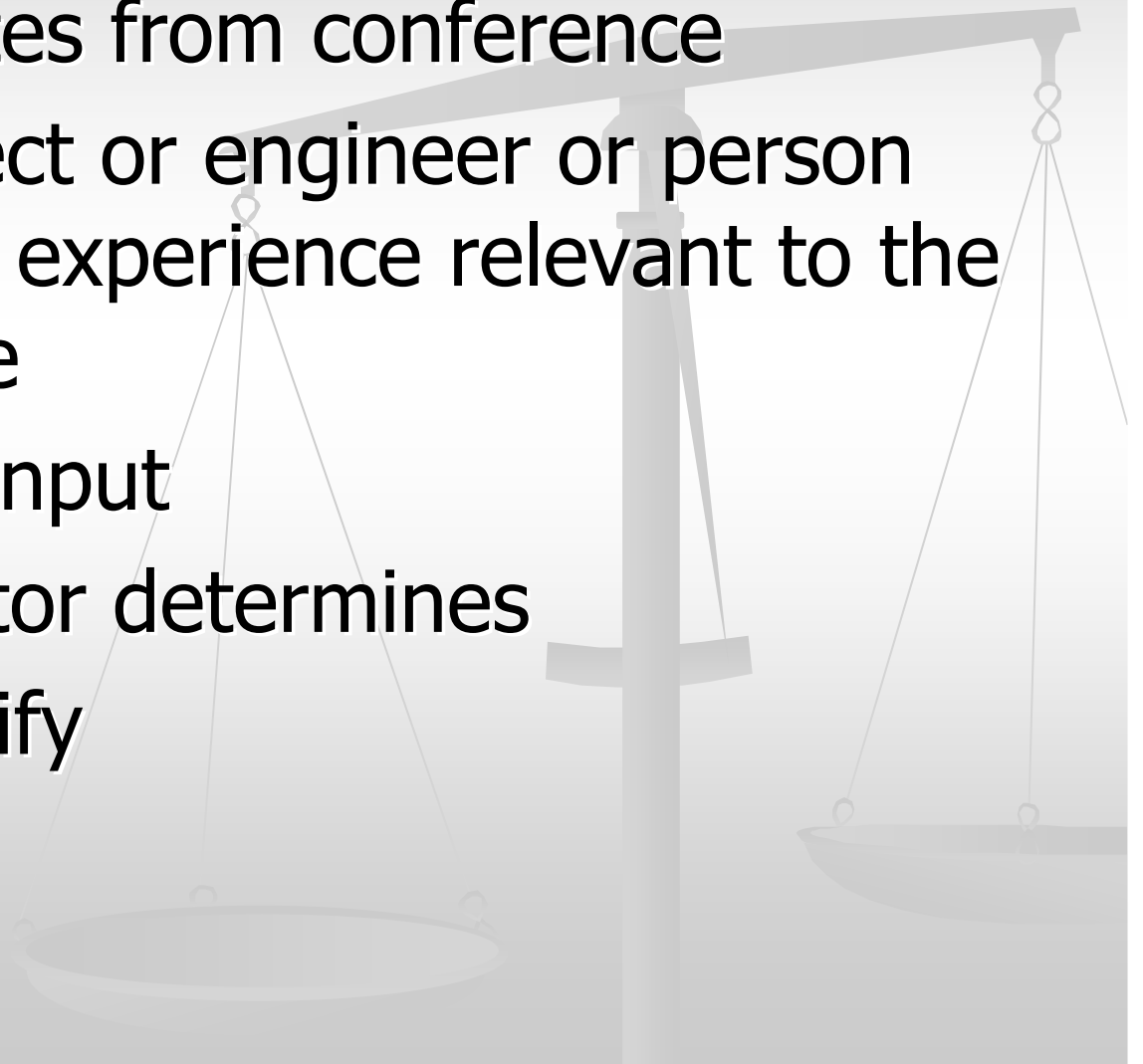
Mediation

- One is mandatory
- Within 7 months of filing or service
- Pre-mediation good faith conference required
- Decision makers with authority
- Termination of Mandatory Mediation



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



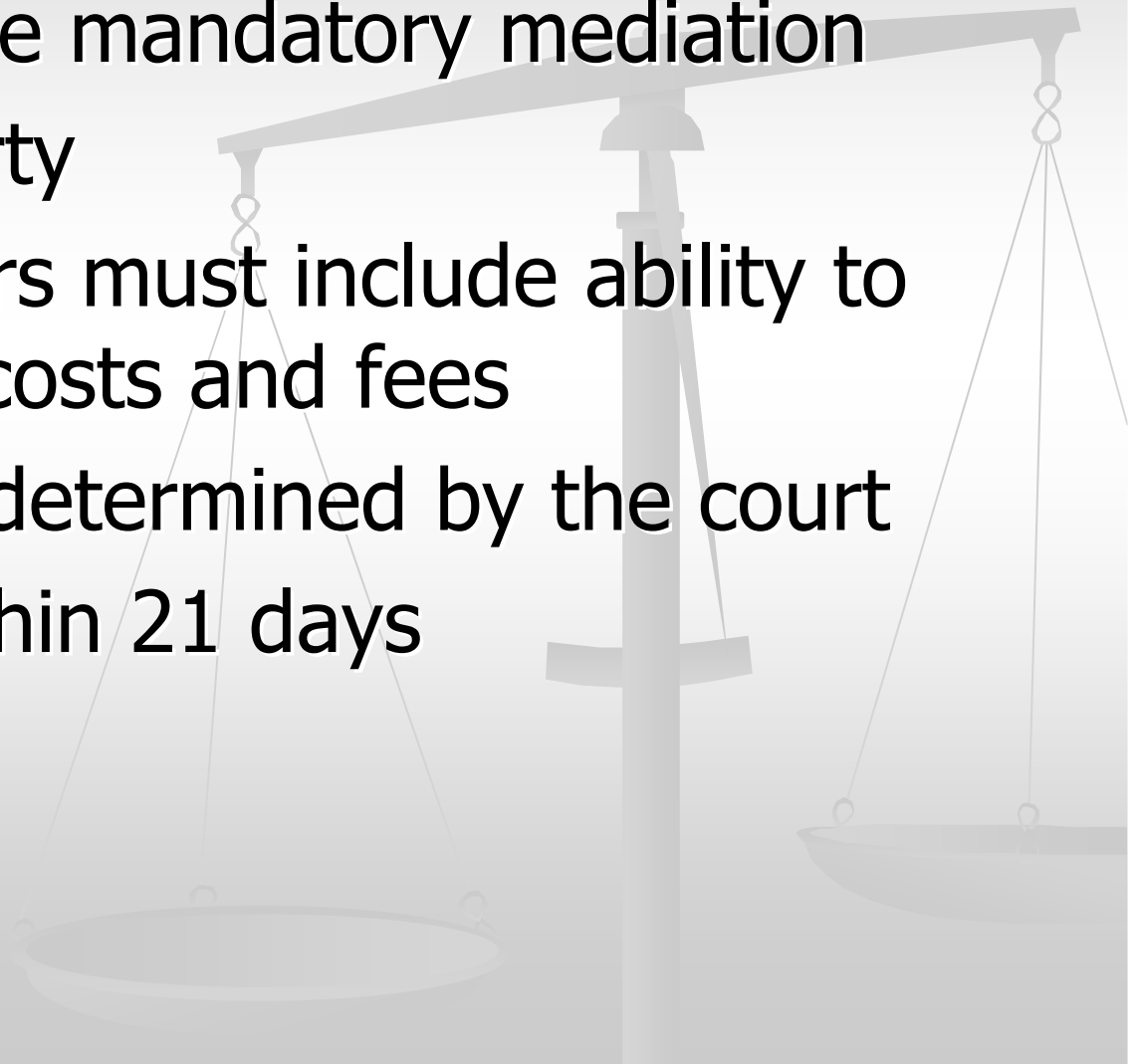
Payment Provisions



- 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
 - Court cannot award any fees or costs to Association

Offer of Judgment Example

- \$3,000,001 offer of judgment by declarant
- \$3,000,000 verdict. Declarant is prevailing party

\$3,000,000	
<u>(600,000)</u>	Fees & Cost to Declarant
\$2,400,000	
<u>(800,000)</u>	Contingent Fee
\$1,600,000	Net to Association

Old Offer of Judgment

- \$3,000,001 offer of judgment by declarant
- \$3,000,000 verdict. Association is prevailing party.

\$3,000,000

 900,000

\$3,900,000

 1,300,000

\$2,600,000

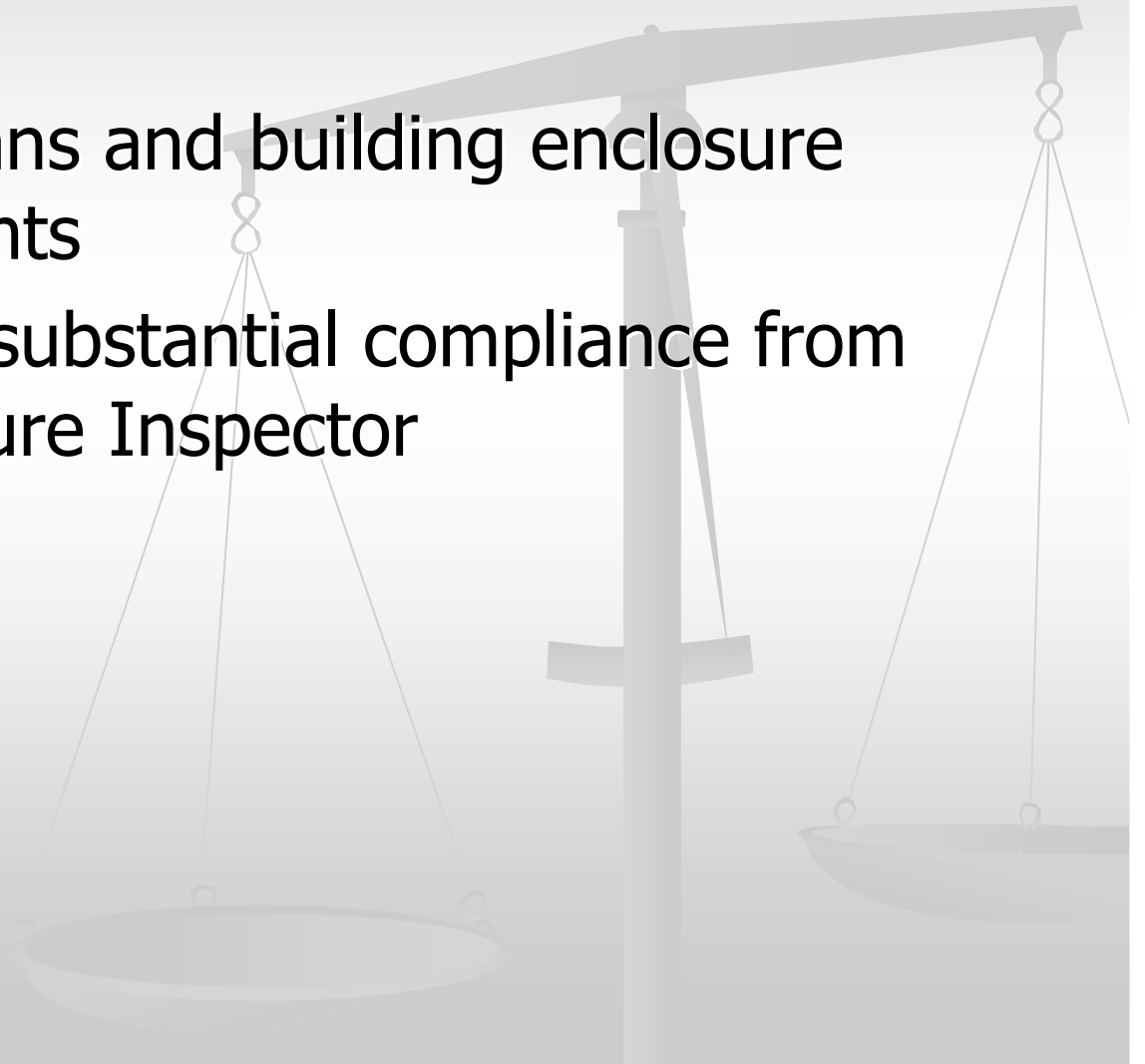
Fees awarded as prevailing party

Contingent Fee

Net to Association

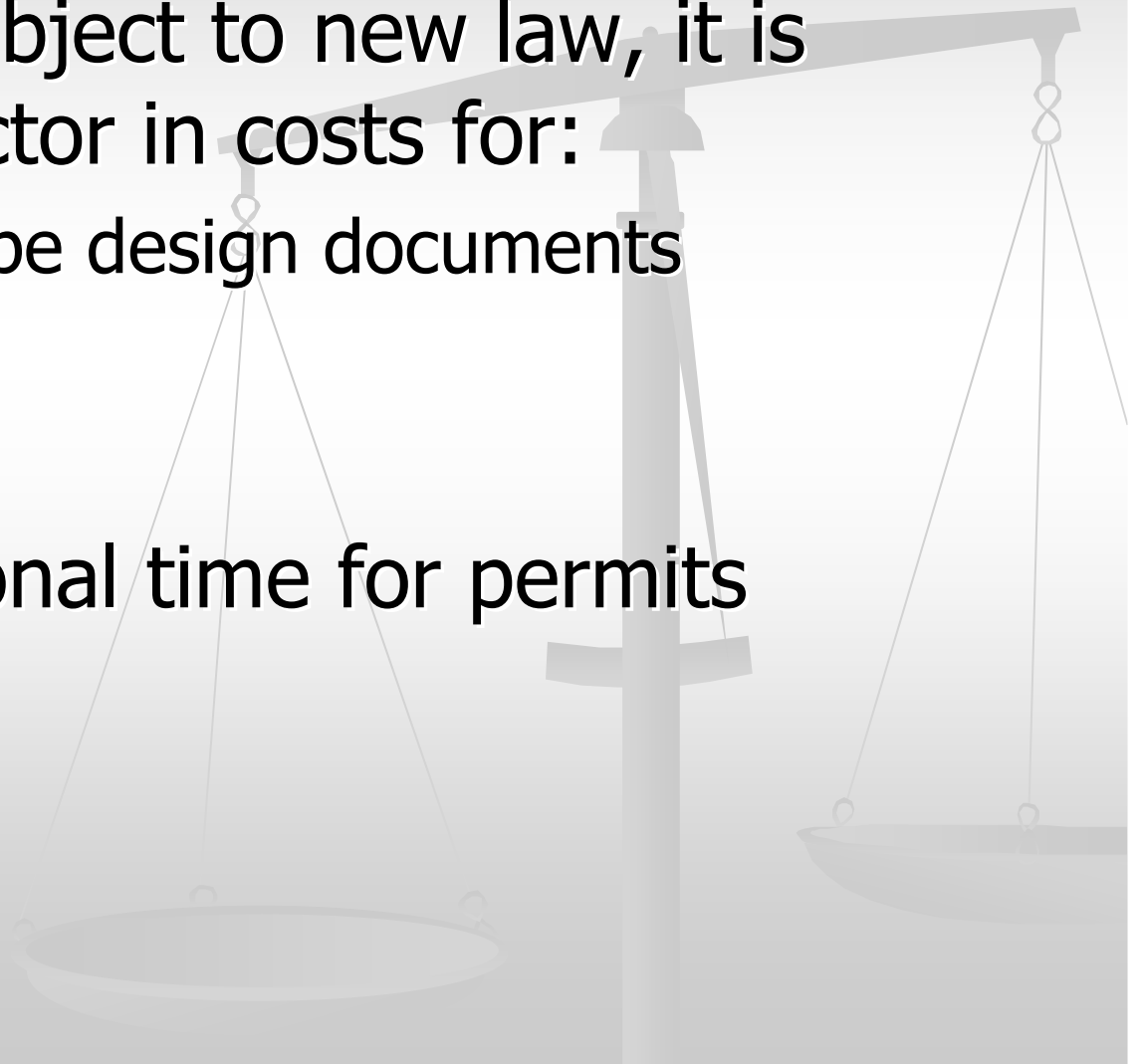
New Projects

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



Repairs

- If repairs are subject to new law, it is necessary to factor in costs for:
 - Building envelope design documents
 - Inspections
 - Window testing
- Factor in additional time for permits



Q&A

Thank you for attending!

