

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2015-0514, New Hampshire Housing Finance Authority v. Pinewood Estates Condominium Association, the court on November 10, 2016, issued the following order:

Supreme Court Rule 22(2) provides that a party filing a motion for rehearing or reconsideration shall state with particularity the points of law or fact that it claims the court has overlooked or misapprehended.

After review of the respondent's motion to reconsider, the court modifies its September 20, 2016 slip opinion as set forth below. In all other respects, the respondent's motion to reconsider is denied.

The slip opinion is modified by deleting the last sentence of the first paragraph on page 5. The modified paragraph reads as follows:

The Act provides that a lien for condominium assessments is generally junior to a first mortgage:

The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments, if perfected as hereinafter provided. The said lien, once perfected, shall be prior to all other liens and encumbrances except (1) real estate tax liens on that condominium unit, (2) liens and encumbrances recorded prior to the recordation of the declaration, and (3) sums unpaid on any first mortgages or first deeds of trust encumbering that condominium unit and securing institutional lenders.

RSA 356-B:46, I(a) (emphases added). A condominium association may, however, gain limited priority over a first mortgage for six months of unpaid assessments if the association follows the procedure provided in RSA 356-B:46, I(c). If that procedure is not followed, the association's lien for assessments will be junior to the first mortgage. See RSA 356-B:46, I(a). This provision encourages associations to promptly act upon unpaid assessments and protects first mortgagees by ensuring that no more than six

months of unpaid assessments can receive priority. See Boyack, supra at 283 (observing that “modern statutes typically balance lender and association interests” by “creat[ing] a limited and capped super-priority-association lien for a certain amount of months’ worth of unpaid assessments”). The Act limits associations to “one priority lien.” See RSA 356-B:46, I(d).

Relief requested in motion for reconsideration denied; slip opinion modified.

Dalianis, C.J., and Hicks, Conboy, Lynn, and Bassett, JJ., concurred.

**Eileen Fox,
Clerk**