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# Real Estate Law ALERT

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This question was considered in the case of *Rampul v Trustees of Mangrove Beach Centre Body Corporate and Others* (9823/2022P) [2022] ZAKZPHC 81 (15 December 2022).



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## Mixed-use schemes: Is it fair for owners of residential units to have different voting rights to the owners of commercial units within the same sectional title scheme?

This question was considered in the case of *Rampul v Trustees of Mangrove Beach Centre Body Corporate and Others* (9823/2022P) [2022] ZAKZPHC 81 (15 December 2022).

In 1994, the developer, Romwood Share Block Investments Limited (developer), opened a sectional title scheme. Simultaneously with the opening of the scheme, the developer filed a set of amended sectional title rules (amended rules) with the Registrar of Deeds. These amended rules have remained in place since then.

A current owner of a residential unit in the scheme argued that certain rules were unreasonable and invalid as they unfairly discriminated against residential unit owners in favour of commercial unit owners by granting the owners of commercial sections 75% of the vote at general meetings when the commercial sections only comprise approximately 27% of the total area of all the sections in the scheme. Thus, the owners of residential sections, which comprise approximately 68% of the scheme, only have 25% of the vote at such meetings.

The owner argued that “*The abovementioned rules are clearly unfair, unequal and prejudicial to the residential unit owners*” and further contended that the owners of the majority residential sections “*have no effective voice in the management, control and administration of the body corporate*”.

Accordingly, the owner sought to set aside the amended rules and argued that the voting requirements should be governed strictly by way of participation quotas in accordance with section 20 of the Prescribed Management Rules made under the regulations in terms of the Sectional Titles Schemes Management Act 8 of 2011 (STSMA).



# Mixed-use schemes: Is it fair for owners of residential units to have different voting rights to the owners of commercial units within the same sectional title scheme?

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## Sectional Titles Act

At the time that the amended rules were filed, the applicable governing legislation was the Sectional Titles Act 95 of 1986 (STA). Section 32(4) of the STA provided that:

*"The developer may, when submitting an application for the opening of a sectional title register, or the members of the body corporate may by special resolution, make rules under section 35 by which a different value is attached to the vote of the owner of any section, or the liability of the owner of any section to make contributions for the purposes of section 37(1)(a) or 47(1) is modified: Provided that where an owner is adversely affected by such a decision of the body corporate, his written consent must be obtained."*

With regards to mixed-use schemes, the position was summed up by the Supreme Court of Appeal in *Body Corporate of Marine Sands v Extra Dimensions 121 (Pty) Ltd and Another* [2019] JOL 46348 (SCA), where Ponnann JA stated that:

*"Since the formula of relative floor area was considered too rigid for calculating the participation quotas for sections in schemes not used solely for residential purposes, the Sectional Titles Act 95 of 1986 provides that the determination of the participation quotas of non-residential sections should be left to the discretion of the developer."*

Thus, the developer was accordingly entitled in 1994, when it opened the sectional title scheme, to, inter alia, amend the value of a section owner's vote.

The STSMA contains a similar provision to the repealed section 32(4) of the STA, namely section 11(2)(a), which reads:

*"The developer may, when submitting an application for the opening of a sectional title register in terms of the Sectional Titles Act 95 of 1986, or the members of the body corporate may by special resolution, make rules under section 10 by which a different value is attached to the vote of the owner of any section, or the liability of the owner of any section to make contributions for the purposes of section 3(1)(a) or 14 (1) is modified."*



## Mixed-use schemes: Is it fair for owners of residential units to have different voting rights to the owners of commercial units within the same sectional title scheme?

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The court further noted that the owner knew that he was buying into a mixed-use scheme and, as a prudent purchaser, knew, or ought to have known, of the provisions of the amended rules when he considered acquiring a section in the scheme. The owner was not compelled to buy into the scheme but chose to do so.

In a mixed-use scheme it is an inevitability that the amendment of voting rights must occur. The court held that the rules giving commercial unit owners a greater weighted vote

were not unreasonable or iniquitous, were not unconstitutional and were reasonable. The developer was permitted to make such rules when opening the sectional title register in terms of the STA and also in terms of the STSMA.

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