

Policy Purpose

SCA WA Inc has implemented this policy in order to provide guidance to members for the protection of their businesses and to promote professionalism and trust in the strata industry.

What is a “Secret Commission”?

A secret commission puts you in conflict in your duty to a client or customer. There have been several decisions of Courts in Australia and overseas that have been highly critical of secret commission arrangements, finding them to be objectionable as undermining trust in the commercial world.

To perform the functions of strata managers, strata managers are necessarily required to form and foster networks and relationships with third parties. This can take many legitimate forms, such as Christmas cards, minor gifts and minor celebratory events.

The key element of a secret commission is that it is secret in the sense that a key player, usually the client or consumer is not involved in and does not know about the transaction.

Secret commissions are also known as kickbacks.

Secret commissions can range from transactions which are criminal offences to more subtle arrangements that involve no criminality. However, secret commissions and kickbacks always have the potential to cause reputational damage to a business and to an industry and, to undermine trust and compromise standards even if not strictly unlawful.

They ultimately undermine what the consumer might otherwise expect to be independent and unfettered advice. Some secret commissions may amount to misleading and deceptive conduct under the *Australian Consumer Law* or criminal offences where bribery, fraud or corruption is involved.

Dealings which fall into this category in the strata sector can include:

- a. Taking or making bribes;
- b. Receiving money or other benefits from a third party in return for some other benefit such as a contract or referral. Benefits can range from gifts, sponsorships and in kind arrangements;
- c. Receiving a cash payment from a supplier in return for recommending that supplier to a strata company;
- d. Accepting services ‘on the side’ for example maintenance or cleaning of your personal home; and
- e. Inducing or giving positive on-line reviews in exchange for a benefit.

SCA WA Policy

SCA WA recommends all strata management businesses:

1. Create a culture in which kickbacks and secret commission are **not** tolerated.
2. Review Management Agreements to:
 - a. Disclose any commissions the strata manager expects to receive in the course of providing management services; and
 - b. Include prohibitions against the manager otherwise accepting gifts or other benefits from a third party supplier of goods and services without disclosure.
3. Review staff employment contracts to include provisions prohibiting the receipt by the employee of gifts, cash or other benefits from third parties or requiring a disclosure of receipt of such gifts or benefits.
4. Implement internal policies and procedures, to assist, avoid, detect and remedy scenarios that involve kickbacks and secret commissions.
5. Always ensure transparency and disclose any benefits (cash or otherwise) that the manager is offered or accepts from a third party supplier of goods or services.
6. Educate staff in relation to what is considered a kickback or secret commission to ensure staff understand your policies and procedures.