



Why Lenders Reject “Recycled” SPEs in Structured Finance Transactions

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In structured finance and [commercial real estate lending](#), borrowers are frequently required to hold mortgaged property through a [single purpose entity \(SPE\)](#) designed to isolate the asset and support the lender’s non-recourse and bankruptcy-remote structure. A recurring issue in these transactions arises when borrowers propose using an existing entity—often referred to as a “recycled SPE.” While borrowers may view reuse of an existing entity as administratively efficient, lenders typically resist this approach and instead require the formation of a newly organized SPE.

Below we outline the principal reasons lenders prefer “recycled” SPEs in structured finance transactions and the practical implications for borrowers and sponsors.

The Role of the SPE in Structured Finance

In structured finance transactions, lenders almost always require borrowers to form a newly organized single purpose entity (SPE) rather than reuse an existing or “recycled” entity.

SPEs are a foundational element of structured finance transactions, particularly in commercial real estate loans, mezzanine financings, and securitized transactions. Lenders rely on SPE structures to:

- Isolate the financed asset from the broader credit risk of the sponsor
- Support the non-recourse nature of the loan
- Reduce the risk of substantive consolidation in a borrower bankruptcy
- Ensure that the borrower’s activities remain limited to ownership and operation of the mortgaged property
- Provide structural predictability for credit committees, rating agencies, and investors

To achieve these objectives, loan documents typically require the borrower to comply with detailed SPE covenants restricting activities, indebtedness, and commingling.

Why Lenders Reject Recycled SPEs in Structured Finance Loans

Despite the apparent efficiency of reusing an existing entity, lenders often view recycled SPEs as introducing unnecessary risk and diligence burdens.

Potential Legacy Liabilities

An entity that previously owned other assets or conducted business activities may carry residual liabilities—even if prior transactions appear fully resolved. Lenders frequently worry about:

- Unknown or contingent liabilities
- Unresolved contractual obligations or indemnities
- Tax liabilities
- Environmental exposures
- Pending or threatened litigation
- Improperly terminated UCC filings or liens

A newly formed entity eliminates the need to investigate these risks.

Bankruptcy and Substantive Consolidation Concerns

A key objective of SPE structuring is reducing the risk that the borrower could be substantively consolidated with an affiliate in bankruptcy. Courts consider an entity's operational history when evaluating separateness.

If a recycled entity previously:

- Owned multiple properties
- Conducted unrelated operations
- Commingled assets or liabilities
- Had employees or operating activities beyond the property

it may be more difficult to demonstrate that the entity was always operated as a true single-purpose vehicle.

For lenders—particularly those relying on non-consolidation opinions—this additional history can complicate the analysis.

Increased Due Diligence and Legal Complexity

A recycled SPE requires lender's counsel to conduct diligence into the entity's prior operations, including:

- Historical lien searches
- Prior financing statements

- Organizational history
- Contractual obligations
- Past ownership or operational activities

From a lender's perspective, forming a new SPE is often a far simpler and more predictable solution than reviewing years of entity history.

Opinion and Rating Agency Sensitivities

Structured finance transactions frequently require non-consolidation opinions and other structured finance [legal opinions](#). Opinion counsel may face greater difficulty providing these opinions if the borrower entity has a complicated operational history.

In securitized transactions, rating agencies may also scrutinize borrower entity history, making newly formed SPEs the preferred structure.

Governance and Separateness Discipline

Lenders view the creation of a new SPE—often a [Delaware limited liability company](#) with an independent manager—as part of the broader governance discipline supporting the bankruptcy-remote structure. Recycled entities may raise questions about whether prior separateness practices were properly maintained.

When Lenders May Permit a Recycled SPE

Although lenders generally prefer newly formed entities, they may occasionally permit the use of a recycled SPE in limited circumstances, particularly where:

- The entity has only ever owned the same property
- The entity has no prior liabilities or unrelated operations
- Full lien searches confirm no outstanding encumbrances
- The entity adopts a new SPE-compliant operating agreement
- An independent manager is added
- Appropriate representations and covenants are provided

Even in these circumstances, many lenders will still require a new SPE to eliminate uncertainty.

Practical Considerations for Borrowers

Borrowers considering the use of an existing entity should anticipate potential lender resistance and evaluate the relative costs and benefits. While reusing an entity may avoid administrative steps—such as transferring contracts, accounts, and permits—those efficiencies are often outweighed by lender concerns regarding structural risk.

In most [structured finance transactions](#), the formation of a clean, newly organized SPE remains the market standard.

Conclusion

The reluctance of lenders to accept recycled SPEs reflects the broader priorities of structured finance: structural simplicity, legal certainty, and bankruptcy remoteness. Although recycled entities may appear efficient from a borrower's perspective, lenders typically view them as introducing historical risk that can easily be avoided through the formation of a new SPE.

Borrowers and sponsors should take these considerations into account early in the structuring process to avoid delays in loan negotiations or closing.

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