



## Question 2: Holding Investment Real Estate

A client sends the following email below requesting analysis and advice.

My name is Gilbert du Motier, and I'm a retired United States Army Officer. I live in a rented apartment in the Battery Park City neighborhood of Manhattan. In the next week or two, my father, Michel, is going to give to me his only asset, a brownstone near Washington Square Park in Greenwich Village neighborhood, which is also in Manhattan. It has a value of \$10 million. My father purchased the land on which it stands for \$1,000. He built the brownstone, which has been fully depreciated. I expect to have it transferred to my name within the next two weeks.

Presently, my father rents the entire brownstone to a single commercial tenant under a "NNN lease", which I'm not sure what that means. I know that the commercial tenant pays the property taxes, electricity bill, heating bill, etc., and subleases the remainder of the building to four residential tenants, each of whom are viewed as good tenants. My father has advised me to maintain the current rental structure, as it will minimize the need for my time and effort, while maintaining strong operating cash flow.

I am married to Marie Adrienne, and we have four adult children. We have no other significant assets, just a pension that will not pay out any death benefit and approximately \$100,000 in bank and investment accounts, and much of our annual income will come from the rent from the brownstone. Marie Adrienne and I share all of our assets, though I will admit that we do not have significant assets beyond the anticipated gift of this brownstone.

I emailed my friend, George, about this situation, as he is extremely wise. George, who presently lives in Virginia, told me that I should put it into a LLC and elect to be taxed as a S Corporation, which will save taxes, though I am not sure how and he could not articulate the reason either beyond saying that it has something to do with self-employment income. If beneficial, I would be happy to transfer some of the brownstone to my wife, though I am not sure if that would result in the imposition of any taxes or how it would affect our estate plan. Presently, each of our wills gives our interests in property to our four children 1/4 each after the second one of us passes, and we prefer to keep it that way to minimize the chance of arguments with our children.

Please answer the following questions:

1. How should I hold the brownstone? Specifically,
  - a. Should we put it in a LLC? What are the pros and cons?
  - b. Should we make a S election? What are the pros and cons?
  - c. Should I transfer any of it to my wife for tax purposes?
2. Are there any estate tax concerns due to the ownership of the brownstone? How should we handle the ownership and the transfer to minimize the chance of paying estate tax?
3. Are there any other concerns?