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## **MONEY BOX LIVE**

**Presenter: VINCENT DUGGLEBY**

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**DUGGLEBY:** Good afternoon. As falling share prices take their toll of investment funds, ISA's and personal pensions, one area of financial planning's gone largely unnoticed except for those trying to sort out the estate of someone who's died. In normal times you realise the assets, pay the necessary tax and then distribute the proceeds to the beneficiaries under the will, but these are not normal times. An estate valued at half a million pounds a few months ago could easily have fallen by 25%, perhaps more if you've got a house which is impossible to sell. So if you're an executor, what can you do about inheritance tax; and if you're in the process of making or revising your will, are there any steps you can take to make matters easier? That's what we're concentrating on in the next half hour on Money Box Live. It so happens that throughout November, you can go to a solicitor to get a will drawn up and instead of paying the usual fee you'll be invited to give money to one of the charities supported by Will Aid, which incidentally will also benefit from tax relief on the donation. If you die intestate there are complications, especially for those who may have divorced or separated, unmarried partners and possibly stepchildren. Then there's the question of whether it's still worthwhile setting up a trust; and if you've already done so, whether it still works in the way you intended. Revenue & Customs are demanding ever more detailed disclosure and proof that what has been done complies with the exact letter of the law. So make the most of your chance to put your question on wills and inheritance tax to my guests: Mike Warburton, tax partner with chartered accountants Grant Thornton; Nicola Plant, a solicitor and specialist in estate planning with Thomas Eggar; and from Edinburgh, Alan Barr, partner with Brodies

and Director of Legal Practice at the University of Edinburgh. 03700 100 444 is the number to call and the first one is from Leslie in Edgbaston.

**LESLIE:** Ah, hello.

**DUGGLEBY:** Hello.

**LESLIE:** Right, I think my situation is probably quite simple, but I'm divorced. I would like to leave everything to my two children and I'm just wondering what appropriate steps might be taken?

**DUGGLEBY:** Okay. How old are your children?

**LESLIE:** 27 and 24.

**DUGGLEBY:** Okay, so we'll deal with this on the basis of course that we're not going to be talking ... The difference between that of course, Nicola, and if the children were under age or under 18 would be different. Okay, so they're grown up children.

**PLANT:** Yes. I mean well it does sound like what you've got is quite a straightforward estate, but it is going to depend really on whether you need any inheritance tax planning as well. Do you think that you would be within that bracket?

**DUGGLEBY:** £312,000 at the moment.

**LESLIE:** Possibly. I don't know how much the house is worth at the moment, but the mortgage ...

**DUGGLEBY:** Less than it was.

**PLANT:** Yes.

**LESLIE:** Yes, less than it was. But the mortgage is very, very small in today's terms.

**DUGGLEBY:** But the will is basically just simply saying everything to my two children and that's it. You're not ...

**PLANT:** Yes, I mean apart from the inheritance tax planning, it is a fairly simple situation. Although I would hedge my bets on this and say it's often, as a solicitor, it's not what the client knows; it's what they *don't* know. So, yes, it seems like a simple situation, but you know it's always worth going along and having a chat to a solicitor.

**DUGGLEBY:** Yes. My concern, Leslie, would be possible remarriage or setting up a relationship with somebody.

**LESLIE:** I think that's very unlikely. (*laughs*)

**DUGGLEBY:** That's what you say, but that's the qualification I would put in because that's where things might change.

**PLANT:** And was your divorce what we call a clean break?

**LESLIE:** Pretty much. I'm still friends with my ex-partner, friends with her new husband. We get on quite well, so I don't think there's going to be any problem there.

**DUGGLEBY:** Okay, well I want to bring in an email which is on a similar theme. This is from a lady in Bristol and she says, 'I have three young children, but my will, which is in existence, was written before the youngest child was born' and she asks whether it's now invalid because she divorced her husband and is living with a new partner. And to add complications, she's got an estranged sister. She wonders whether she will have any say. And what she's basically asking - and I'll go to you Alan first of all for this - is whether you actually need to make a fresh will and start all over again?

**BARR:** Well if she's made a will that was in favour of her previous husband, then very much so. In Scotland, in particular, her divorce has no effect on that will, so she could find herself with things passing to probably the person she least wants to in the whole world ...

**DUGGLEBY:** Which is the sister.

**BARR:** Yes. No, to the husband, the former husband.

**DUGGLEBY:** Oh the husband - yes, right.

**BARR:** And so, therefore, it's really very important for her to get a new will made just as soon as possible, and I think that probably applies in England as well.

**DUGGLEBY:** But, Nicola, as far as the English law is concerned, once you've divorced then a will is null and void if it was made beforehand, isn't it? Or is it only in respect of the husband?

**PLANT:** It's only in respect of the husband. So if she's made a will that said 'to my husband, then to my children', then the children are fine. All I would say is if you've got a new child that's been born, you want to make sure that the will actually defines it as 'my children' and not naming the children.

**DUGGLEBY:** Right, okay. So that's important. So the fact the youngest child wasn't born when the will was made could be a material difference. Does the fact that ... So the ex-husband though is completely out of the picture?

**PLANT:** Yeah.

**DUGGLEBY:** But in this case of course she's got a new partner and he presumably isn't in the will and she might want him to be in the will.

**WARBURTON:** I get a lot of questions like this - do I really need a solicitor? Now I'm not a solicitor, I've got no vested interest, but it's almost always worth going to a solicitor to get this done properly because if it isn't done properly you get all sorts of problems. And I think that people really have a responsibility to consider those left behind. Someone's going to have to clear up the mess when you're dead and really the best way of making sure that's easy for them is to have a properly structured will in the first place. It's worth the money going to a solicitor.

**DUGGLEBY:** I mean I know in the survey that was done by Will Aid that apparently 40% of people don't have wills at all. I find it extraordinary. Here's Emily in Bedfordshire and she says, 'I'm 34 and expecting our first baby with my partner in January.' Again not married. 'But we've split everything 50-50, we've got our own savings, own bank accounts. We don't have a will, but maybe I think we should.' I think, gosh, you *must* have a will. You surely should be expecting a child and a partner and you know all this. Just because you split everything 50-50, it doesn't substitute for a will.

**PLANT:** Don't forget as well that you can appoint guardians in a will as well, so where you've got minor children you know often that's one of the most important things that parents of young children can do in their wills - is actually say who will look after the children.

**WARBURTON:** And of course it can change, so the people you want as a guardian when your children are 8 or 10 may be different from when they're teenagers, so you really need to update that.

**DUGGLEBY:** So, Alan, I mean she says actually ... Her final sentence is 'What's my first step?'

**BARR:** Well the first step is to see a solicitor to make a will as soon as possible.

**DUGGLEBY:** Yeah, I mean essentially it can't be too soon, can it?

**BARR:** It really can't, and it can make provision for what happens after the birth as well as long as that's explicitly done.

**DUGGLEBY:** There is a common question that comes through every programme on this, which is people worried about ... I think they're worried particularly about girls getting divorced. They're worried about relationships breaking up. And you know put rather bluntly, it's how do I make a divorce-proof will? I mean is there such a thing?

**PLANT:** Sadly it is a question I get more and more asked by parents with children who are married. I suppose that's where the role of trusts come in. You know one can draft a will in such a way that the children can have the benefit, but it doesn't actually fall into their estates for divorce purposes.

**DUGGLEBY:** And of course trusts can ...

**WARBURTON:** (*over*) That's what trusts are for. Trusts are there and it's a great concept that we have in UK law, which you don't have in all countries in the world, and it does what it says on the tin: you trust somebody to apply your assets in the way you want and you make these decisions in your lifetime to operate after you're dead. Sorry, I'm not trying to run it up for solicitors here, but that's what solicitors do. They set up trusts for people for this very purpose.

**DUGGLEBY:** And is that the same principle in Scotland, Alan?

**BARR:** Absolutely, exactly the same. It's very important for these purposes.

**DUGGLEBY:** Okay. Now we're moving onto another issue, which is very much in the news. Let's pick it up with Bernard in Maidenhead.

**BERNARD:** Hello.

**DUGGLEBY:** Hello Bernard.

**BERNARD:** Hello, my question concerns inheritance tax and the transfer of the nil rate band relief between married couples. It is a year now since the 2007 pre-Budget report whereby any unused nil rate band of a deceased spouse could be transferred to the estate of the survivor. Couples drawing up wills and estate planning now know the rules, especially the importance of retaining proper records, but what is the position of someone like myself whose wife died in 1991 since which time all asset records, including her will, have been destroyed? Marriage and death certificates are easy to obtain, but how do I prove to the Revenue or how do my executors prove to the Revenue that my wife had not used any of her nil rate band?

**DUGGLEBY:** Okay, well this is in common with several other people. It's this burden of proof on a death that's taken place many years ago. I mean first of all just the general principle, Mike. Is there any time limit on which you're supposed to hang onto records relating to probate?

**WARBURTON:** No there isn't, but it does here prove the benefit. When Alistair Darling a year ago introduced this change, it's a very valuable change and it has reduced considerably the number of people ...

**DUGGLEBY:** *(over)* Well of course it doubles potentially the amount of ...

**WARBURTON:** *(over)* ... effectively doubles it up for those people particularly who haven't structured wills carefully in advance of this. But the downside of course is that because it's retrospective, it goes right back to the first death which in theory I suppose goes back to 1975 when capital transfer ...

**DUGGLEBY:** *(over)* This is 1991.

**WARBURTON:** *(over)* 1991's long enough ago. I mean the benefit we have at the moment, as you've said Bernard, one of the benefits of the Internet is we have the websites where you can actually get hold of the information on the wills, grants of probate and what have you. But the question about the burden of truth of whether the nil rate band was utilised, we have had discussions with HMRC on this and they have

said that they will apply this with a “light touch”, as they call it, and the experience we’ve had so far is that HMRC have not proved difficult and generally speaking it hasn’t been the problem that I thought it would be.

**DUGGLEBY:** It is important though, Bernard, to remember that it’s not the current level of £312,000 that gets doubled. We tend to talk a bit loosely about £624,000. It’s actually not that because the limits in 1991 were considerably lower and we’re talking ...

**WARBURTON:** (*over*) Yes, but the point is it’s the proportion of the nil rate band ...

**DUGGLEBY:** Indeed it is, it’s the proportion.

**WARBURTON:** ... and therefore if dies on the second death and the nil rate band is £400,000, you could have £800,000.

**DUGGLEBY:** Indeed, but you don’t simply deduct the old sum from the new sum.

**WARBURTON:** No, you have to work out the proportion on the first death that got utilised.

**DUGGLEBY:** That’s right, the proportion. But as far as the actual proof, I mean this is a question of Bernard, I think I’m right in saying Bernard - you know what bit of paper do you have to send to the Revenue that convinces them to say yes I can see your wife didn’t use any of the thing?

**BERNARD:** Well this is the problem.

**PLANT:** Bernard, can I just ask? Did your wife have a will?

**BERNARD:** Yes, she did. It was made in the early 70s ...



**PLANT:** And have you still ...

**BERNARD:** ... but it was never executed and there was never any probate because there wasn't sufficient to go to probate. So the only thing I can prove to the Revenue is that probate wasn't necessary. But it does leave the other difficulties around things like any gifts from the seven year rule, for example.

**PLANT:** But I think certainly where you've got, if you've got a will that simply left everything to you ...

**BERNARD:** That's the case.

**PLANT:** ... then at least the Revenue are going to see on the face of the will that everything went to a surviving spouse and, therefore, you know that's implication that the nil rate band was unused at the time.

**BERNARD:** Yes, I haven't got a copy of the will and neither have the solicitors. It's been destroyed.

**PLANT:** Right.

**WARBURTON:** I mean you can get hold of a copy of the will on the website, I believe.

**PLANT:** Well not if it wasn't proved.

**DUGGLEBY:** No, not if it wasn't proved.

**PLANT:** So the solicitor's have destroyed the will, have they?

**BERNARD:** Well yes, I've been in contact with them and they've got a record of there being one, but they haven't got the actual will itself.

**DUGGLEBY:** If it was a small estate, I can understand - if it was a very small estate. I mean I think possibly the Revenue would have to accept the fact that you know the solicitors haven't ... If the solicitors wrote a letter and explained the circumstances, would that be regarded as sufficient evidence?

**PLANT:** I think it would certainly help. I mean all I can say to reassure you, Bernard, is that certainly of the estates that we've proved so far, we've not had any difficulty.

**DUGGLEBY:** Okay, we must move on because there are lots and lots of calls coming in.. Joan in St. Albans?

**JOAN:** Yes, my husband died about 10 years ago and I got the house and everything that he had and I didn't pay any inheritance tax. And my daughters are all married, but I live with my son and when I die I'm going to leave my house to my son. Now the question is when I die, will he be able to claim the taxes that I didn't pay?

**DUGGLEBY:** This is again a variation. The first question of course is is your estate likely to be above £312,000 as things stand at the moment?

**JOAN:** Well the house is about £500,000.

**DUGGLEBY:** Okay, so there is an inheritance tax problem potentially. Will he be able to evoke the ... Same thing again, 10 years ago. Your husband left you everything in his will ...

**JOAN:** He did, yes.

**DUGGLEBY:** ... which you then were the executor of the will?

**JOAN:** I've got the will and I was the executor

**DUGGLEBY:** Well in that case, I think that's probably good enough then, isn't it?

**BARR:** If you've got the will, that's a very good start.

**DUGGLEBY:** I imagine the Revenue can then check it out pretty quickly, Mike, can they?

**WARBURTON:** Yes, yes. I mean it just sounds ... I'd say, Joan, I think you're one of the beneficiaries of Alistair Darling's change here ...

**JOAN:** Oh good.

**WARBURTON:** ... because it does seem to me that you're going to get the benefit of two nil rate bands. You said your husband left you everything.

**JOAN:** Yeah.

**WARBURTON:** Therefore he didn't utilise any of the inheritance tax nil rate band himself, and under the way the law now is you on your death will have your own nil rate band, plus your husband's nil rate band at the time of your death.

**JOAN:** Oh right.

**WARBURTON:** So if the nil rate is half a million pounds by that stage, you'll get a total of a million and of course that disregards any possible changes if there's a change in government in the meantime and the Conservatives put the threshold up to a million. So it does seem in any event you're going to be a beneficiary of this change which was just brought in.

**JOAN:** Oh that's good. Wonderful!

**DUGGLEBY:** I just want to bring in you, Alan. We've just had an email coming in. 'My wife and I would like to make wills and we've just moved to Scotland. We're unsure about Scottish law. If we make our wills from our current address in

Renfrewshire, what would happen if we moved back to England? Can you advise?’

**BARR:** For most ... It depends how long they’re moving to Scotland. If it’s a temporary basis and they have English wills in force, then there’s probably no need to make a change. However, if they’re moving on kind of an indeterminate basis, so they’re settling in Scotland but don’t know what might happen in future, probably best to make a new Scottish will. Equally if they then move back to England, it’s likely that for most purposes it will remain in force.

**DUGGLEBY:** Yes, they do add ‘Does Scottish law apply in England? If we take that course, can we rely on Scottish law to apply in England?’

**BARR:** For most purposes. But again if they move back on a permanent basis, then they should consider making a new will at that point.

**DUGGLEBY:** Okay, so the best thing there is to do the new will in Scotland and then review the situation if they think they’re not going to stay there?

**BARR:** (*over*) If they move back permanently. That’s right.

**DUGGLEBY:** Alright. Okay, thanks for that. And now we have Diane in Suffolk.

**DIANE:** Yes, good afternoon. My mother died in January this year and the solicitors have been rather slow in applying for probate and it’s only following a rocket I sent them last week that we have received draft copies of the oath to the Court of Justice applying for probate. And my question is how will the inheritance tax, which is around £23,000, be affected by this current financial state of the country bearing in mind that the majority of the estate is in property and stocks and shares?

**DUGGLEBY:** Indeed. Can you give me the exact ... They died in January, so essentially ...

**DIANE:** 10<sup>th</sup> of January.

**DUGGLEBY:** ... you're looking at a pretty dire position. I mean if the average stocks and shares fall is taken into account, it's something of the order of 40%, Mike.

**WARBURTON:** It's a big fall. This is one of the particular features that we're seeing at the moment with big falls in both stocks and share values and indeed property values. The good news is that where you've had a death and following that death these asset values have fallen, you can make an election to substitute the sale values of the shares if it's within 12 months or property within 4 years and you can fill in a form called an IHT38, which claims ... effectively substitutes the sale value for probate purposes with the value that existed at the time of death. Now where you've got, as in your case, £23,000 worth of inheritance tax, if by making this election you're saving inheritance tax at 40%, you've got to remember that that's also going to be the figure that's used for capital gains purposes on any future sale, you know assets of this nature. So the point is the fall in the value of the assets will save you inheritance tax ...

**DUGGLEBY:** But you have to sell them, don't you?

**WARBURTON:** You have to have sold them - yes, that's the point. But what people often do is they will sell them to either another family member or something of that nature ...

**DUGGLEBY:** To crystallise the loss.

**WARBURTON:** ... to crystallise the disposal, but keep it within the family. But that's then the base cost for capital gains purposes ...

**DUGGLEBY:** Indeed.

**WARBURTON:** ... but of course with capital gains at 18%. As long as you're

actually saving inheritance tax with the substitution of that value, then it's a worthwhile exercise to do.

**DUGGLEBY:** I think the issue here though. You haven't yet got probate?

**DIANE:** No.

**DUGGLEBY:** Now isn't there a problem?

**DIANE:** We've only received the draft this weekend.

**DUGGLEBY:** Yuh, I'm a bit concerned that this death took place in January. There's only a year to do this?

**WARBURTON:** You've got a year ...

**DUGGLEBY:** Can you make the election even though you haven't ... No, because you haven't sold it.

**WARBURTON:** Well the disposal of the shares needs to be within a year.

**DUGGLEBY:** Yeah, but if you haven't got probate you can't dispose of the shares.

**PLANT:** They need to get on with it.

**DIANE:** Well yeah, precisely.

**WARBURTON:** Could I ask you, were the shares held through a stockbroker?

**DIANE:** Well to a Barclays investment.

**WARBURTON:** Yes. Well what you'll find is if the shares are held by a stockbroker, they will normally be the legal nominee for the shares and that you can even ... as legal owners sometimes they will actually sell even if you haven't got probate. And I did this with my own father on his death. I was able to sell the shares because I was able to instruct the stockbroker. Now not all stockbrokers will do this, it depends how well you know them, but it is legally possible for them to sell as the owner of the shares.

**DUGGLEBY:** So even though the probate hasn't been granted then, Nicola?

**PLANT:** If it was un-certificated, yes Mike's absolutely right. If they were un-certificated and it was a discretionary management.

**DUGGLEBY:** Pretty important, yes. Certainly you'd better pursue that, Diane, because time is running out. But also ...

**DIANE:** I mean would it be wise to instruct them to do that now at this ...

**WARBURTON:** I think the answer is have a word with your stockbrokers and find out their capacity to do it. As I say, depending upon how it's held, some will and some won't. But I think you're in time to do this plainly.

**DUGGLEBY:** Is it all or nothing, Mike? Do you have to elect for all the shares or can you elect on an individual basis?

**WARBURTON:** Well what they can do is ... It's all or nothing for the ...

**DUGGLEBY:** (*over*) For the declaration. But you can then sell some shares ...

**WARBURTON:** You can choose which shares to sell.

**DUGGLEBY:** So you can sell the ones with the biggest loss - in other words

calculate the amount of shares you've got to sell in order to wipe out the inheritance tax liability.

**DIANE:** Right.

**DUGGLEBY:** In other words, just make sure you sell sufficient of the estate to wipe out that £26,000.

**WARBURTON:** And just as a question. There's no joint ownership of any property involved here, is there? The property that was left, that's absolutely ...

**DUGGLEBY:** *(over)* It was your mother's alone?

**DIANE:** Well no, it was shared with myself.

**WARBURTON:** There's a particular problem that you need to be aware of with jointly held property because if you've got jointly held property normally on a first death the capital taxes office will allow a discount of either 10 or 15%. If you then make the election, IHT38 to substitute the sale value, if the sale value's only fallen by perhaps 5% you can actually make yourself worse off and the difficulty with the election is once you've made it, you can't change your mind. So you do need to look carefully at how the values have moved.

**DIANE:** Who would advise me on that?

**WARBURTON:** Well I guess your solicitor would advise you.

**DIANE:** Well they haven't been too helpful, have they? *(laughs)*

**WARBURTON:** Well that's the difficulty. Your solicitor is being slow. But I mean they're the right people to advise on this.



**PLANT:** Have you tried approaching another partner in the firm or ... ?

**DIANE:** Well yes. Well in fact the supervisor of the solicitor that's dealing with it has now hopefully taken over.

**DUGGLEBY:** Well I would say look, you know time is of the essence and I would hold them to it. I'd simply say we haven't got any time to mess around. We've got to get this sorted out by January, otherwise I'm going to lose out and I'm going to hold you accountable, and I think that will probably force ...

**BARR:** It'll focus the mind.

**DUGGLEBY:** Focus the mind, indeed. While you're there, Alan, perhaps you could answer this one. 'For tax purposes - I'm well over the inheritance tax threshold - I've left a life interest in my house to my live-in partner with the balance of the state, mostly cash, to my relatives. Can you tell me how this will affect the tax position? Who actually bears the responsibility for settling up the tax in this circumstance?'

**BARR:** Well you can set out exactly what you want to happen in the will. If the whole estate is taxable, if there's no spouse here, which ...

**DUGGLEBY:** There isn't, no.

**BARR:** ... sounds like it's the case, then you can actually set out what you want to happen. So in terms of the life interest of the house passing to the partner, it can be arranged so that the tax falls on the rest of the estate and comes out of these assets, always presuming that there's enough other assets to cover that tax bill.

**DUGGLEBY:** I think there is. I think it's a fairly substantial estate by the looks of things. So you can actually say those who receive the balance of the estate or the residue of the estate are responsible for all the tax?

**BARR:** For all of the tax, yes.

**DUGGLEBY:** And same in England, I imagine?

**PLANT:** That's right, yes.

**DUGGLEBY:** So that's something which you should do really if there's a doubt about who pays tax.

**BARR:** Indeed. If you're dividing up between assets, particularly a very large asset going to one person and the rest going to others, you really want to be clear about where the tax on that very large asset is to fall.

**DUGGLEBY:** We have an interesting email from somebody who's obviously got a farm which they wish to go to one particular, one of I think one of eight nephews. And the problem is this will was not correctly executed and although it would have been okay if it *was* executed, the fact is these assets have now come back to the generality of all eight nephews when one wants the farm and the rest get the rest. And I think they're wondering how on earth you untangle this.

**WARBURTON:** It's a bit like an exam question, isn't it? We've got agricultural property relief issues on the farmland, we've got eight people and we've got an invalid will, so unless there was an earlier will you're essentially into intestacy with its own complications.

**DUGGLEBY:** I mean you can see what's happened. I mean this is a typical probably country estate where one's going to carry on the farming and the rest are going to do something else. I mean could they all agree to kind of put the will back as it were?

**PLANT:** Ideally they would all sit round a table and sort it out, and they've got 2 years from the death to do it.

**WARBURTON:** And if they don't do it, the only winner I'm afraid is going to be the legal profession.

**DUGGLEBY:** Okay, right, Celia in Holloway, your call.

**CELIA:** Oh hello there. I am single, I have no partners, no children. I have two houses in London. One is my PPR - I live in that one. The other one has been empty for about 20 years, but I've let it for the past 10. I'm thinking about gifting this to a charity, but my concern is it's in a very desirable part of London and I'm wondering if the income tax ... This is my concern: will they ever believe that I left it empty for so long and not let it?

**DUGGLEBY:** Well I think that's not ...

**CELIA:** Hold on. Then I have two houses in Wales, one of which I live in when I'm there; another one - that one's been empty for 35 years, but I love old houses and I like looking after them. Will they believe that you know I haven't been letting and making a mint?

**DUGGLEBY:** Forgive me, Celia. This is a question about your will, I think. You want to make a will?

**CELIA:** Yes.

**DUGGLEBY:** Yes, well ...

**CELIA:** Yes, I'm declar... Yes, exactly.

**DUGGLEBY:** The thing is that this will will happen when you're dead, right?

**CELIA:** Yes.

**DUGGLEBY:** Right, okay. So I don't think that you're going to be in a position to answer the questions about what was happening during your lifetime and I don't think, Mike, that the Inland Revenue will raise probably any questions about it.

**WARBURTON:** I don't think they will - no, no.

**DUGGLEBY:** I mean it's a matter for your executors to sort out these things. I mean I think you should write a letter which goes with your will, or indeed write something to the solicitor explaining the situation.

**WARBURTON:** Well I think explain everything because you've obviously got some quite complicated affairs here and really to write it all down so that your solicitor knows exactly what you've got and where. I have a form called a 'Dying Tidily' form, which I ...

**CELIA:** A what?

**WARBURTON:** A 'Dying Tidily' form.

**CELIA:** D.I ...

**WARBURTON:** D.Y.I.N.G. Dying Tidily. I basically ...

**CELIA:** Oh Dying Tidily?

**WARBURTON:** I think people should die tidily. They should know where all their assets are and they should leave it all written down. They should tell their relatives, they should tell their solicitor, their executors. So make life as easy as possible for the people that follow because I mean when you're dead people are worrying about you and they've got lots of other things on their mind and really it pays to make life as easy as possible for them.

**CELIA:** I don't think they will worry.

**WARBURTON:** You don't?

**CELIA:** No.

**DUGGLEBY:** We must move on quickly to Jeanette in Lincolnshire. Jeanette?

**JEANETTE:** Oh good afternoon. We made discretionary trust wills when our joint estate was worth a little over £300,000, which was the IHT limit at the time. Of course the house and our investments are way down now and we're way below the joint 624, I believe it is, IHT allowance. And with the new ruling that spouses can now pass over to each other the unused allowance, is our discretionary will still of value and use or would a new straightforward will be better?

**DUGGLEBY:** Nicola?

**PLANT:** Well apart from having the discretionary trust gifting the will, is the rest of the will okay?

**JEANETTE:** As far as I understand.

**PLANT:** You're happy with that?

**JEANETTE:** I'm happy with the will at the moment, as far as I understand it not being a legal person, but we have two sons.

**PLANT:** The point about the gift of the discretionary trust is that it's a very flexible arrangement, so at the moment I would say you don't need to do anything now. It's the sort of thing you need to go and talk to a solicitor about on the first death, and it may still ... in some cases it's still worthwhile setting up the discretionary trust. But the important thing to remember is that you don't have to. It's flexible enough that in

many cases it can be wound up and you can simply pass everything to the surviving spouse and then you get your two nil rate bands.

**DUGGLEBY:** I want to take Susan next, but I'm not going to take your call in voice, Susan. I'll just summarise for Mike. Susan wants to know what the rules are for the seven year lifetime gifts to avoid inheritance tax. Well it's seven years. Is there any other complication? What sort of advice can you give?

**WARBURTON:** What, the seven year rule?

**DUGGLEBY:** Yeah, for giving stuff to her children.

**WARBURTON:** Basically it's got to be a free gift. You make a free gift to your children and rather than in trust then and you live seven years, then it's completely out of your estate.

**DUGGLEBY:** It is, but what evidence do you have to have?

**WARBURTON:** Well evidence of the gift. I mean if it's something where it's shares, you've got share transfer forms. The problems arise with what we call chattel - you know paintings and that sort of thing - and I would get something in writing. And I'd also physically change it. I don't like the idea of someone saying, "I've given you the picture, but it's still going to sit on my wall." That's not going to work. You've actually got to physically make the gift.

**DUGGLEBY:** And one final question which is an email. I want to put it you, Alan. It's 'Why on earth do you lawyers have to use such frightfully old-fashioned language? Why can't you have plain English in wills?'

**BARR:** We don't have to and we don't any more. If your lawyer's using old-fashioned language, get a new lawyer.

**PLANT:** In fact new lawyers, solicitors qualifying these days are actually marked down at law school for using fancy language.

**DUGGLEBY:** Okay, thanks. That's Nicola Plant from Thomas Eggar and Alan Barr in Edinburgh from Brodies. Mike Warburton's from Grant Thornton, a regular on the programme. And I can advise you that Paul Lewis will be back with Money Box at noon on Saturday to keep you up to date with the week's personal finance news and I'll be back same time next Monday afternoon taking your calls on fuel bills and energy saving on Money Box Live. And in the meantime you can consult the website, [bbc.co.uk/moneybox](http://bbc.co.uk/moneybox).