



# Forbes

July 13, 2009



## Just Do It

Since his wife was diagnosed with multiple sclerosis, estate planner Marty Shenkman has discovered you can be charitable at what you know best. *By Ashlea Ebeling*

**A**FTER NEW JERSEY ANESTHESIOLOGIST Patti Klein was diagnosed with multiple sclerosis in 2006, she and husband Martin Shenkman threw themselves into fundraising for the National MS Society. Along with their five sons (ages 17 to 24) from previous marriages, their Norfolk terrier Elvis and a group of friends dubbed the “Tax Team,” the couple has raised \$44,000 in MS walkathons.

But Klein and Shenkman, both now 52, realized there was something even more productive he could do: provide free advice on special legal issues confronting those with MS and other chronic diseases. “I could go lick stamps, but I feel I can give more back using my special skills,” says Shenkman, a New Jersey lawyer/CPA/M.B.A. who bills \$500 an hour and has written 34 how-to legal books, some aimed at other pros and some at consumers.

In the past few years Shenkman has devoted hundreds of pro bono hours to his newfound cause. He has just published *Estate Planning for People with a Chronic Condition or Disability* (Demos Medical Publishing, \$22), with all royalties going to charity. He’s also written a book, *Funding the Cure*, that the MS Society gives to potential donors. (The volume covers everything from donations of household items, appreciated stock and retirement assets, to advanced techniques involving trusts and bargain sale gifts.) Now Shenkman is finishing a book for distribution by the Michael J. Fox Foundation that covers both estate planning and charitable giving for the families of those with Parkinson’s disease.

In short, Shenkman found he can do the most good by doing what he does best. “People say, ‘Can’t I just write a check, that would be much easier?’” says Joyce Nelson, executive director of the National MS Society. But sometimes contributing your professional services goes further.

Nelson points, for example, to the compelling rebranding and advertising campaign done for the MS Society in 2007

by the Portland boutique ad firm Wieden & Kennedy, known for its Just Do It Nike ad campaign. Cofounder Dan Wieden, whose daughter has MS, valued the services contributed by his colleagues at \$1 million. If the society had spent that kind of money on an ad campaign, donors would rightly complain about excessive overhead.

You can't deduct the dollar value of your donated time, but volunteering still beats earning cash and then donating the money because it spares you payroll taxes. (You can deduct out-of-pocket

expenses incurred for charitable work.)

Part of what's driving Shenkman's efforts is his belief that while boilerplate legal forms can work okay for young, healthy folks, they won't do if you have a chronic illness. In fact, different diseases call for different forms.

A standard living will states what medical interventions you do and don't want to prolong your life in the event of a terminal illness. But what if you get amyotrophic lateral sclerosis? This progressive paralysis is typically fatal within two to five years. But cognitive function usually isn't impaired,

and some of those diagnosed with ALS lead intellectually productive lives for years, physicist Stephen Hawking being the most famous example. With a custom living will, you use your knowledge of your prognosis to make decisions. Maybe you want intense or experimental treatments now but not later, if you've already lost certain functions. Moreover, by executing a new living will after your diagnosis, you head off any questions about whether you've thought such issues through.

A related problem, Shenkman says, is that many professional advisors erroneously assume that those living with a chronic disease must have significant cognitive impairments. That, and perhaps a reluctance to get too much into the clinical weeds, can lead them to suggest that patients give up more control over their financial and legal affairs than they need or want to.

Shenkman's approach has been influenced by watching Klein manage her MS and deal with the sometimes wrong-headed assumptions of others. Her MS causes fatigue, but it is unlikely to leave her wheelchair-bound. So far a regime of daily Copaxone shots, and some reasonable compromises, have kept her symptoms at bay. She has cut back hours at work, skipping weekend and night shifts. She has traded running in the New York marathon for 5K runs. She makes it a point to relax, with beach walks at a new weekend retreat in Connecticut.

Shenkman has gone to work on the couple's own planning needs. He took out insurance policies on his own life, with Klein as the beneficiary of one and the MS Society as beneficiary of the other. Next on their to-do list is setting up a revocable living trust for Patti. With one of these you name yourself and someone you trust (or a bank) as cotrustee, and put your assets in the trust. You retain control, but the cotrustee can pay bills or perform other tasks if you're indisposed. Eventually, if you need to, you can relinquish decision making powers, too. This suits Klein, who isn't one to give up control any sooner than necessary.

If you or someone in your family is suffering from a chronic or terminal disease, read Shenkman's tips (*see box*) and his more extensive advice at [forbes.com/taxes](http://forbes.com/taxes). **F**

## PLANNING PRESCRIPTIONS

Here are Marty Shenkman's pointers for those diagnosed with a chronic disease.

► **CONSOLIDATE ACCOUNTS.** You can retain control of your own affairs longer if you have to deal with only one bank and one brokerage statement a month. That's particularly true if your disease will eventually result in cognitive decline. Moreover, if and when you do need help, you will have made your helper's job simpler.

► **CUSTOMIZE A LIVING WILL.** Your living will—the document that states what medical procedures you do and don't want to prolong your life—should take explicit account of your diagnosis. Do you want lifesaving procedures (breathing tubes, hydration) and do you want to pursue experimental treatments? What about if your disease has progressed? Do you want to donate your organs at death? Be specific. If, for example, you want to donate tissue samples for research to help others with the same illness you have, say so.

► **SIGN FORMS WHILE YOU CAN.** If you put off executing crucial documents for too long, questions might be raised later about whether you were still legally competent to sign those papers. If you're facing mental decline—you just got an Alzheimer's diagnosis—speed up the planning process. At the time you sign key documents, corroborate your competency with a letter from your physician. If your illness results in shaky handwriting, execute a special affidavit explaining the variations in your signature.

► **PICK AGENTS WITH CARE.** You'll need to sign separate power of attorney documents designating an agent or agents to make financial and health care decisions for you if you can't, plus a release form authorizing your agents to obtain your medical records. Make sure the agents you pick are willing and able to handle routine matters over a long period. (Even if the person is a relative, you may want to provide for compensation.) Name multiple successor agents—that way, if one person can't or won't act, someone else you trust is ready to step in.

► **USE TEMPORARY OR LIMITED POWERS.** If you are likely to need sporadic hospitalization, consider signing a separate power of attorney giving an agent only limited powers during those periods when you're temporarily incapacitated. For example, this agent would be able to pay your bills and file your taxes but not sell your house or make gifts of your assets.

► **TALK TO YOUR INVESTMENT ADVISOR.** If he or she isn't comfortable and competent discussing the implications of your prognosis—for your investment horizon, your income and your cash flow needs—find one who is. MS, for example, generally has no impact on longevity but could affect your earnings power. You might want to tap savings now to modify your home to make it accessible. The sooner you address these issues, the better.

—A.E.