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States' Noxious Weed Statutes and Regulations:

Montana



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States' Noxious Weed Statutes: Montana

Montana Code Annotated

Title 7 Local Government

Chapter 14. Transportation

Part 21. General Provisions Related to County Roads

7-14-2132. Control of weeds along roads and highways

- (1) The district weed board shall control noxious weeds on the county roads.
- (2) If the department of transportation does not control noxious weeds on state and federal highways in any county, the district weed board shall control them. Upon presentation by the board of a verified account of the expenses incurred, the costs of control shall be paid by the department.

Chapter 22 Weed and Pest Control

7-22-2101. Definitions

As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Board" means a district weed board created under 7-22-2103.
- (2) "Commissioners" means the board of county commissioners.
- (3) "Coordinator" means the person employed by the county to conduct the district noxious weed management program and supervise other district employees.
- (4) "Department" means the department of agriculture provided for in 2-15-3001.
- (5) "District" means a weed management district organized under 7-22-2102.
- (6) "Integrated weed management program" means a program designed for the long-term management and control of weeds using a combination of techniques, including hand-pulling, cultivation, use of herbicide, use of biological control, mechanical treatment, prescribed grazing, prescribed burning, education, prevention, and revegetation.



(7) “Native plant

(8) “Native plant community” means an assemblage of native plants occurring in a natural habitat.

(9)

(a) “Noxious weeds” or “weeds” means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.

(10) “Person” means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or right-of-way for a canal or lateral.

(11) “Weed management” or “control” means the use of an integrated weed management program for the containment, suppression, and, where possible, eradication of noxious weeds.

7-22-2102 Weed Management Districts Established

A weed management district shall be formed in every county of this state and shall include all the land within the boundaries of the county, except that a weed management district may include more than one county through agreement of the commissioners of the affected counties.

7-22-2103 District Weed Board -- Appointment – Commissioner Powers

(1) The commissioners shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203.

(2) Upon a recommendation from the weed board, the commissioners may appoint a weed coordinator.

(3) The commissioners shall approve, approve with revisions, or reject a weed management plan submitted pursuant to 7-22-2121.



7-22-2109 Powers and Duties of Board

(1) In addition to any powers or duties established in the resolution creating a district weed board, the board may:

- (a) supervise a coordinator and other employees and provide for their compensation;
- (b) purchase chemicals, materials, and equipment and pay other operational costs necessary for implementing an effective noxious weed management program. The costs must be paid from the noxious weed fund.
- (c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the chemicals, materials, or equipment must be paid by the person and collected as provided in this part.
- (d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state;
- (e) enter into cost-share agreements for noxious weed management;
- (f) enter into agreements with commercial applicators, as defined in 80-8-102, for the control of noxious weeds;
- (g) request legal advice and services from the county attorney; and
- (h) perform other activities relating to weed management.

(2) The board shall:

- (a) administer the district's noxious weed management program;
- (b) establish management criteria for noxious weeds on all land within the district;
and
- (c) make all reasonable efforts to develop and implement a noxious weed management program covering all land within the district owned or administered by a federal agency.

7-22-2111 Liability Restrictions

A district is liable for damages caused by its use of herbicides only for an act or omission that constitutes gross negligence. The provisions of 2-9-305 apply to board members, coordinators, and employees of a district.



7-22-2112 Information on Herbicide Use

The district must provide information on protective clothing, health hazards, and proper application techniques to mixers, loaders, and applicators of herbicides and make the information available for review by the public at the district office.

7-22-2115 Noxious Weeds and Seeds Declared Nuisance

Noxious weeds and the seed of any noxious weed are hereby declared a common nuisance.

7-22-2116 Unlawful to Permit Noxious Weeds to Propagate -- Notice Required in Sale

(1) It is unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land, except that any person who adheres to the noxious weed management program of the person's weed management district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.

(2) When property is offered for sale, the person who owns the property shall notify the owner's agent and the purchaser of:

(a) the existence of noxious weed infestations on the property offered for sale; and

(b) the existence of a noxious weed management program or a noxious weed management agreement as provided in subsection (1).

7-22-2117 Violations

(1) Any person who interferes with the board or its authorized agent in carrying out the provisions of this part or who refuses to obey an order or notice of the board is liable for a civil penalty in the amount of the actual cost to the board or the estimated cost of removing the noxious weeds from the impacted property in addition to any penalty imposed under 7-22-2134.

(2) All fines, bonds, and penalties collected under the provisions of this part must be paid to the county treasurer of each county and placed by the county treasurer into a fund to be known as the noxious weed fund.

7-22-2120 Funding -- Reporting Requirements -- Emergency Exemption

(1)

(a) Before a district applies to the state for state or federal funding, the district shall provide the department with a weed management plan, as provided in 7-22- 2121, and with a copy of the resolution creating the board.



- (b) After the initial submission of the weed management plan, the district's weed management plan must be updated and submitted to the department every 2 years.
- (c) The department may adopt rules and procedures necessary to implement this section. The rules may not impair the ability of the district to meet its responsibilities.

(2) The department may exempt a district from the requirements of subsection (1) if a noxious weed emergency is declared by the governor as provided in 80-7- 815.

7-22-2121 Weed Management Program

(1) The noxious weed management program must be based on a plan approved by the board and the commissioners.

(2) The noxious weed management plan must:

(a) specify the goals and priorities of the program;

(b) review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations;

(c) specify pesticide management goals and procedures, including but not limited to water quality protection, public and worker safety, equipment selection and maintenance, and pesticide selection, application, mixing, loading, storage, and disposal; and

(d) estimate the personnel, operations, and equipment costs of the proposed program;

(e) develop a compliance plan or strategy; and

(f) incorporate cooperative agreements established pursuant to 7-22-2151.

(3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial vegetation and wildlife habitat. When possible, management must include cultural, chemical, and biological methods.

(4) The board may establish special management zones within the district. The management criteria in those zones may be more or less stringent than the general management criteria for the district.

7-22-2126. Embargo

(1) The board may establish embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.



(2) The board shall establish a special embargo program for the movement of forage, as defined in 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in 80-7-903.

(3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not transport or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo meets the requirements of the state certification program and the department verifies compliance with the program, the board shall release the embargo. The forage may also be released if the board:

(a) verifies the guaranteed delivery back to the original producer, as defined in 80-7-903;

(b) approves burning or disposal of the forage; or

(c) approves other alternatives.

(4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of Title 80, chapter 7, part 9, to the department within 48 hours.

(5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not accomplished, the board may condemn the forage and implement through its employees the conditions in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage.

7-22-2131 Noncompliance with Weed Control Requirements -- General Notice

(1)

(a) If a complaint is made against a landowner or if the board has reason to believe that noxious weeds are present on a landowner's property, the board shall notify the landowner by certified mail of the complaint and shall request permission for the board's agent to enter the property to conduct an inspection.

(b) If the landowner has an agent for service on file with the secretary of state, the notice must be given by certified mail to the registered agent.

(c) The landowner or the landowner's representative shall respond within 10 days of receipt of the notice.

(2)



- (a) If the board's agent and the landowner or landowner's representative agree to an inspection, the agent and the landowner or representative shall inspect the land at an agreed-upon time.
- (b) The board or the board's agent may seek a court order to enter and inspect the land to determine if noxious weeds are present on the property if:
- (i) within 10 days of sending the certified letter to the address on the tax records or to the agent for service, the board is unable to determine the owner of the property; or
 - (ii) the letter cannot be delivered because the landowner or the landowner's representative refuses to sign the receipt or does not reside on the property.
- (3) If the board finds noxious weeds on the property during the inspection, the board shall:
- (a) seek the landowner's or representative's voluntary compliance with the district weed management program in accordance with 7-22-2132; or
 - (b) if voluntary compliance is not obtained, notify the landowner or the landowner's representative by certified mail that noxious weeds were found on the property.
- (4) The notice must contain the language specified in this section.
- (5) If the board believes it is advisable, the board may post a dated order in a conspicuous place on the property providing notice that noxious weeds have been found on the property and informing the landowner or landowner's representative of the options for complying with the weed management program pursuant to 7-22-2132 and the actions that may be taken under 7-22-2134 if the landowner fails to comply with the weed management program.
- (6) All correspondence with a landowner or the landowner's representative concerning notifications of weed infestations, including requests made pursuant to subsection (1) to inspect property and notifications of noncompliance, must be made on the uniform notification material provided by the department and must:
- (a) list the noxious weeds found on the property;
 - (b) provide the legal description of the property;
 - (c) provide the address of the property, if available;
 - (d) state the fact that the presence of the weeds violates state law and that the landowner has 10 days after receiving the notice to contact the board or its agent;
 - (e) provide the address and phone number for the board;
 - (f) notify the landowner of the landowner's:
 - (i) responsibility to submit a weed management proposal; and
 - (ii) right to request a hearing to contest the finding of noncompliance, including the timeframe for making the request; and



(g) specify the actions the board may take if the landowner fails to remove the weeds, including but not limited to the anticipated costs of destroying the weeds and the 25% penalty allowed under 7-22-2134.

7-22-2132 Procedures for Compliance

(1) A landowner is in compliance with this part if the landowner submits and the board accepts a written weed management proposal to undertake specific control measures, and the landowner remains in compliance if the terms of the proposal are met. The proposal must require that the landowner or the landowner's representative notify the board as measures in the proposal are taken.

(2) In accepting or rejecting a weed management proposal, the board shall consider the economic impact on the landowner and neighboring landowners, practical biological and environmental limitations, and alternative control methods to be used.

7-22-2134. Noncompliance--actions by board

(1) The board may seek a court order to enter upon the infested parcels of the landowner's property if attempts to achieve voluntary compliance have been exhausted. The board may institute appropriate noxious weed control measures, including but not limited to:

(a) allowing the local weed district coordinator to implement the appropriate noxious weed control measures if the actions taken are valued at the current rate paid for commercial management operations in the district and are reflected in the bill sent to the landowner and the clerk and recorder; or

(b) contracting with a commercial applicator as defined in 80-8-102 if the issues of compliance are not resolved under an agreement proposed and accepted pursuant to 7-22-2132 and:

(i) the landowner does not take corrective action within the 10-day period provided for in 7-22-2133; or

(ii) the board does not receive a formal objection or the board of county commissioners does not receive a request for a hearing.

(2) A commercial applicator hired under this section shall carry all insurance required by the board.

(3) If a court issues an order approving a board's actions, the court retains jurisdiction over the matter:

(a) until the actions specified in the weed management plan or court order are complete;

(b) for the length of time specified in the order; or

(c) for 3 years if the order does not specify a time limit.



(4) After instituting appropriate noxious weed control measures, the board shall submit a copy of the bill, including the penalty provided for in subsection (4)(b), to the county clerk and recorder and, by certified mail, to the landowner that:

(a) covers the costs of the weed control measures;

(b) contains a penalty of 25% of the total cost incurred;

(c) itemizes the hours of labor, cost of material, equipment time, legal fees, and court costs or includes an invoice from a commercial applicator if the board contracted for weed control pursuant to subsection (1); and

(d) specifies that payment is due 30 days from the date the bill is received.

(5) If a landowner who received a notice to take corrective action requests an injunction or seeks to stay the corrective action in district court within 10 days of receipt of the notice, the board may not institute control measures until the matter is finally resolved, except in emergency situations.

(6) If the board declares an emergency and institutes appropriate measures to control the noxious weeds, the landowner who received the order is liable for costs as provided in subsection (4) only to the extent determined appropriate by the board, the board of county commissioners, or the court that finally resolves the matter.

7-22-2142 Sources of Money For Noxious Weed Fund

(1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from any source in an amount not less than \$100,000 or an amount equivalent to 1.6 mills levied upon the taxable value of all property; and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.



(5) Subject to 15-10-420, the commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. Pursuant to an election held in accordance with 15- 10-425, the amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone.

7-22-2143 Determination of Cost of Weed Control Program

Based on the board's recommendations, the commissioners shall determine and fix the cost of the control of noxious weeds in the district, whether the same be performed by the individual landowners or by the board.

7-22-2144 Payment of Cost of Weed Control Program

The total cost of weed control within the district must be paid from the noxious weed fund. The cost of controlling weeds growing along the right-of-way of a state or federal highway must, upon the presentation by the board of a verified account of the expenses incurred, be paid from the state highway fund in compliance with 7-14-2132 and any agreement between the board and the department of transportation. Costs attributed to other lands within the district must be assessed to and collected from the responsible person as set forth in 7- 22-2134.

7-22-2145 Expenditures from Noxious Weed Fund

- (1) The noxious weed fund must be expended by the commissioners at the time and in the manner as is recommended by the board to secure the control of noxious weeds.
- (2) Warrants upon the fund must be drawn by the board. Warrants may not be drawn except upon claims duly itemized by the claimant, except payroll claims that must be itemized and certified by the board, and each claim must be presented to the commissioners for approval before the warrant is countersigned by the commissioners.

7-22-2146 Financial Assistance to Persons Responsible for Weed Control

(1) The commissioners, upon recommendation of the board, may establish a cost-share program for the control of noxious weeds. The board shall develop rules and procedures for the administration of the cost-share program. These procedures may include the cost-share rate or amount and the purposes for which cost-share funds may be used.

(2)



(a) Any person may voluntarily enter into a cost-share agreement for the management of noxious weeds on the person's property. The coordinator shall draft a cost-share agreement in cooperation with the person. The agreement must, in the board's judgment, provide for effective weed management.

(b) The agreement must specify:

(i) costs that must be paid from the noxious weed fund;

(ii) costs that must be paid by the person;

(iii) a location-specific weed management plan that must be followed by the person; and

(iv) reporting requirements of the person to the board.

(c) The cost-share agreement must be signed by the person and, upon approval of the board, by the presiding officer.

(3) The agreement must contain a statement disclaiming any liability of the board for any injuries or losses suffered by the person in managing noxious weeds under a cost-share agreement. If the board later finds that the person has failed to abide by the terms of the agreement, all cost-share payments and agreements must be canceled and the provisions of 7-22-2134 apply to that person.

(4)

(a) When under the terms of any voluntary agreement, whether entered into pursuant to 7-22-2132 or otherwise, or under any cost-share agreement entered pursuant to this section a person incurs any obligation for materials or services provided by the board, the board shall submit a bill to the person, itemizing hours of labor, material, and equipment time. The bill must specify and order a payment due date not less than 30 days from the date the bill is sent.

(b) A copy of the bill must be submitted by the board to the county clerk and recorder. If the sum to be repaid by the person billed is not repaid on or before the date due, the county clerk and recorder shall certify the amount not repaid, with the description of the land to be charged, and shall enter the sum on the assessment list as a special tax on the land, to be collected in the manner provided in 7-22-2148.

7-22-2148 Payment of Weed Control Expenses -- Tax Liability

(1) The expenses incurred by the board for noxious weed control undertaken pursuant to 7-22-2134 must be paid by the county out of the noxious weed fund.

(2) If the sum to be repaid by the landowner billed under 7-22-2134 is not repaid on or before the date due, the county clerk shall certify the amount due, with the description of the land to be charged, and shall enter the amount on the assessment



list of the county as a special tax on the land. If the land is exempt from general taxation for any reason, the amount due and to be repaid may be recovered by direct claim against the landowner and collected in the same manner as personal taxes.

(3) All amounts collected pursuant to subsection (2) must be deposited in the noxious weed fund.

7-22-2150 Cooperation with State and Federal-Aid Programs

The board may cooperate with any state or federal-aid program that becomes available if the district complies with 7-22-2120. Under a plan of cooperation, the direction of the program must be under the direct supervision of the board of the district in which the program operates.

7-22-2151 Cooperative Agreements

(1) A state agency that controls land within a district, including the department of transportation; the department of fish, wildlife, and parks; the department of corrections; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for integrated noxious weed management on state-owned or state-controlled land within the district. The agreement must include the following:

(a) an integrated noxious weed management plan, which must be updated biennially;

(b) a noxious weed management goals statement;

(c) a specific plan of operations for the biennium, including a budget to implement the plan; and

(d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.



(4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on a state electronic access system.

7-22-2152 Revegetation of Rights-Of-Way and Areas That Have Potential for Noxious Weed Infestation

(1) Any person or state agency proposing a mine, a major facility under Title 75, chapter 20, an electric, communication, gas, or liquid transmission line, a solid waste facility, a highway or road, a subdivision, a commercial, industrial, or government development, or any other development that needs state or local approval and that results in the potential for noxious weed infestation within a district shall notify the board at least 15 days prior to the activity.

(2) Whenever any person or agency constructs a road, an irrigation or drainage ditch, a pipeline, an electric, communication, gas, or liquid transmission line, or any other development on an easement or right-of-way, the board shall require that the areas be seeded, planted, or otherwise managed to reestablish a cover of beneficial plants.

(3)

(a) The person or agency committing the action shall submit to the board a written plan specifying the methods to be used to accomplish revegetation at least 15 days prior to the activity. The plan must describe the time and method of seeding, fertilization practices, recommended plant species, use of weed-free seed, and the weed management procedures to be used.

(b) The plan is subject to approval by the board, which may require revisions to bring the revegetation plan into compliance with the district weed management plan. The activity for which notice is given may not occur until the plan is approved by the board and signed by the presiding officer of the board and by the person or a representative of the agency responsible for the action. The signed plan constitutes a binding agreement between the board and the person or agency. The plan must be approved, with revisions if necessary, within 10 days of receipt by the board.

7-22-2153 Agreements for Control of Noxious Weeds Along Roads -- Liability of Landowner Who Objects to Weed District Control Measures – Penalties

(1) The board may enter into an agreement with a landowner that allows the landowner to manage noxious weeds along a state or county highway or road that borders or bisects the landowner's property.

(2) The agreement must be signed by the landowner and the board's presiding officer. An agreement involving a state highway right-of-way must also be signed by a representative of the department of transportation.



(3) The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the landowner or anyone acting on behalf of the landowner in managing noxious weeds pursuant to the agreement. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the landowner who signed the agreement.

(4) If the landowner violates the agreement, the board shall issue an order informing the landowner that the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the landowner complies with the agreement within a specified time period.

(5)

(a) If a landowner objects to weed control measures along a state or county highway or road that borders or bisects the landowner's property and does not enter into an agreement pursuant to this section and if the board finds that the person has failed to provide alternative weed control, the board shall issue an order informing the landowner that the management of noxious weeds on the right-of-way will be undertaken by the board unless the landowner provides to the board an acceptable plan of alternative weed control within 30 days.

(b) Failing to provide alternative weed control pursuant to subsection (5)(a) is a misdemeanor. Upon conviction, an offender shall be sentenced pursuant to 46-18-212 and assessed the costs of weed control provided by the board. A second or subsequent conviction is punishable by a fine of not less than \$500 or more than \$2,000, plus the costs of weed control provided by the board.

7-22-2154 Public Purchase or Receipt of Property -- Weed Management Plan

(1) Except as provided in subsection (4), prior to the purchase of real property with public funds or the receipt of real property by a nonfederal public entity, the purchaser or grantee shall have the property inspected by the county weed management district. The county weed management district's report regarding the property must be filed with the purchaser or grantee. The costs associated with the inspection must be borne by the seller or grantor.

(2) If the report indicates that there are noxious weeds present on the property, the purchaser, seller, grantee, or grantor shall develop a noxious weed management agreement to ensure compliance with the district noxious weed management program. However, unless the parties agree otherwise, a seller or grantor is obligated by a noxious weed agreement only until the property sale or transfer is completed. Except as provided in subsection (4), the weed management agreement must be incorporated into the purchase agreement.

(3) The provisions of this section do not apply to: (a) the state acquisition or disposition of a public right-of-way pursuant to Title 60, chapter 4; or (b) lands sold or purchased through land banking pursuant to 77-2-361 through 77-2-367.



(4) If a transfer of property will occur during the winter months when the ability to identify noxious weeds is significantly reduced by snow cover, the purchaser, seller, grantee, or grantor may request a 6-month extension for completion of the inspection and any noxious weed management agreement that may be required. If, upon inspection, it is determined that a noxious weed management agreement is necessary, unless otherwise agreed by the parties, the purchaser or grantee is responsible for implementing the provisions of that agreement.

