

## Features of Concluding an Emphyteutic Land Use Agreement in Ukraine

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**Abstract.** The relevance of this study is conditioned upon the fact that in Ukraine, emphyteutic land use has recently become one of the main ways of using agricultural land. This was facilitated by the introduction of substantial changes in the legal regulation of emphyteutic land use in the state, which was based on the best traditions of foreign practices in the use of agricultural land. The absence of mandatory details of the emphyteusis agreement in the legislation, which may become one of the reasons for declaring such transactions invalid in the future, also encourages this study. The subject of this study is regulatory and legislative acts on the regulation of emphyteutic legal relations in Ukraine. The purpose of this paper was to characterise the main provisions of emphyteusis contracts (the right to use other people's land plots for agricultural needs), with special attention paid to the terms and conditions of such transactions. The paper considers the innovations of legal regulation of the right to use other people's land plots for agricultural needs and the main essential conditions for concluding emphyteusis (land use) contracts in Ukraine. During the research, the following methods of cognition were used: historical, comparative legal, logical-normative, system-structural. During the study, a historical legal analysis of the development of legal regulation of the right to use someone else's agricultural land plot in independent Ukraine was performed. Special attention was paid to the characteristics of the legal regulation of the right to use someone else's land plot for agricultural needs (emphyteusis) in the Civil Code and Land Code of Ukraine. The terms and conditions of the emphyteusis agreement and the specific features of the implementation of the right to emphyteutic land use were clarified. The study thoroughly analysed the procedure for concluding and notarising emphyteutic transactions. The main and auxiliary terms and conditions for concluding contracts for emphyteutic land use were highlighted. To protect the rights and interests of the parties to emphyteutic land use, the emphyteusis agreement must be notarised. The texts of emphyteusis agreements should reflect the main mandatory conditions for concluding a contract listed in the study, and at the request of the parties – other terms and conditions. The practical value of this study lies in a list of substantial and supplementary terms and conditions of the emphyteusis agreement, which should be prescribed by the parties in the text of the transaction to protect their rights and interests

**Keywords:** emphyteusis agreement, agricultural land use, notarisation of emphyteutic land use transactions

### Introduction

It is well known that the origin of the institution of emphyteusis occurred in Ancient Greece (in the 4<sup>th</sup> – 3<sup>rd</sup> centuries BC) and it was borrowed by other countries, including the Roman state, as it contributed to the efficient conduct of agricultural production.

The question arises among scientists whether to consider the emphyteusis of that time (late 4<sup>th</sup> century – 5<sup>th</sup> century): firstly, the “Roman “hereditary lease”, secondly, a kind of “(long-term) land lease”, and thirdly, a mixed concept of emphyteusis, i.e., both lease and a real right (real right with the obligation to pay rent).

A group of scientists, including S.V. Reznichenko, L.V. Herasymchuk and V. Shemonayev, believe that the above-mentioned emphyteusis agreement is an “imitation of an indefinite lease” [1, p. 458]. Scientists, including A. Podoprygora, D. Dozhdiev, claim that the unification of the legal regime of the land – emphyteusis was carried out by the Constitution of Emperor Zeno, according to which emphyteusis was considered a separate third type of contract [2, p. 160].

Over time, the institution of emphyteusis was improved and found implementation in the regulations of that time (late 4<sup>th</sup> century – 5<sup>th</sup> century), namely the fixed-term hereditary lease of land was reflected in public law, e.g., in the institutions of Gaius (160 AD) and the Digests of Justinian (530-533 AD) (for example, D. 6:3), and later received its legal consolidation in significant acts of that time: the Codex Theodosianus (438), as well as the Code of Justinian (529-533 AD). Further spread of the institution of emphyteusis occurred both in European countries and outside of Europe, e.g., in Canada, where this issue is governed in the Civil Code of Quebec [3]. According to V.V. Gutieva's dissertation research during the time of Austria-Hungary, the norms on the legal regulation of the institution of emphyteusis were also in effect on western Ukrainian lands, namely emphyteusis land use was considered as a “long-term hereditary right “to use someone else's land” [4].

Only in 2004, in independent Ukraine, the genesis of regulation of a new real right took place, namely: the use of someone else's agricultural land plot (emphyteusis), in connection with the entry into force of the Civil Code of Ukraine

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in 2003 [5]. The civil legislative act was the beginning of the implementation process for the introduction of a new real right in the state – the use of land for agricultural needs. This is evidenced by the adoption of the respective amendments to the Land Code of Ukraine in 2007 by the Law of Ukraine No. 997-V “On Amendments and Repeal of Certain Legislative Acts of Ukraine in Connection with the Adoption of the Civil Code of Ukraine” [6]. Considerable changes to improve the legal regulation of emphyteutic legal relations in the state were introduced in the main legislative acts of civil and land legislation.

Many scientists and practitioners, including not only historians, civilists, practitioners, but also scientists who investigate land legal relations, have devoted their research to the study of the new legal institution of emphyteusis, which lies in the legal regulation of the right to use someone else's land plot for agricultural needs. From the standpoint of this study, it is also worth highlighting the research by S. Reznichenko and L. Herasymchuk, as well as V. Shemonayev [1], I. Ignatenko and D. Fedchyshyn [7; 8], and V. Shvydka [7], as well as M. Shulga [8], E. Yurchenko [9]. However, the analysed studies do not consider changes in Ukrainian legislation that related to emphyteutic legal relations during 2019-2021 (since they were published before the updated emphyteutic legislation came into force), and do not pay due attention to the content of relevant transactions. In the Law of Ukraine No. 340-IX “On Amendments to Certain Legislative Acts of Ukraine on Combating Raiding” of December 5, 2019 [16], the legislators substantially changed the list of essential conditions of the emphyteusis agreement, which creates certain issues in the direct conclusion of emphyteusis agreements and requires scientific research.

*The purpose of this study:* to find the specific features of the agreement regarding the right to use someone else's land plot (agricultural), to clarify the essential and supplementary terms and conditions of the emphyteusis agreement, as well as the grounds for notarising said agreements.

### **Legal Regulation of the Right to Use Someone Else's Land Plot for Agricultural Needs (Emphyteusis)**

The Law of Ukraine “On Amendments and Invalidation of Certain Legislative Acts of Ukraine in Connection with the Adoption of the Civil Code of Ukraine” adopted only on April 27, 2007 [6], the institution of emphyteusis was legislatively governed by Chapter 16-1 “The right to use someone else's land plot for agricultural needs or for development” of the Land Code of Ukraine. Thus, in 2007, a new civil law and land law institution was legislated – the right to use a land plot for agricultural needs (emphyteusis). It should be emphasised that in the following years, the Civil Code of Ukraine [5] and the Land Code of Ukraine [10] were substantially amended several times both regarding the legal regulation of the real right to use someone else's agricultural land only for agricultural needs (emphyteusis), and directly regarding the procedure for concluding and certifying emphyteusis agreements.

In particular, the Law of Ukraine No. 5070-VI “On Amendments to Certain Legislative Acts of Ukraine Concerning the Termination of the Right to Use Land Plots upon Allocation for Public Needs” of July 5, 2012, added two new grounds for termination of emphyteusis agreements [11]. And the Law of Ukraine No. 2498-VIII “On Amendments to Certain Legislative Acts of Ukraine on Resolving Collective

Land Ownership, Improving Land Use Rules in Agricultural Land, Preventing Raids and Promoting Irrigation in Ukraine” of July 10, 2018 [12] established that the term of use of a land plot of state, municipal, and private property for agricultural needs cannot exceed 50 years.

From the standpoint of this study, it is necessary to highlight the Law of Ukraine No. 1423-IX “On Amendments to Certain Legislative Acts of Ukraine on Improving the System of Management and Deregulation in the Sphere of Land Relations” adopted on April 28, 2021 [13]. This Law introduced changes to the rules for using someone else's land plot for agricultural use (emphyteusis), both to the Land Code [10] and Civil Code [5] of Ukraine.

A more detailed description of changes in legislative regulation on the right of emphyteutic land use is highlighted in the study of the author of this paper “The evolution of the formation of the right to use someone else's land for agricultural purposes (emphyteusis), as a legal institution in independent Ukraine” [14].

Analysing the evolution of legal and legislative regulation regarding the right to use someone else's land plot for agricultural use in independent Ukraine, i.e., emphyteusis, the authors of this paper are inclined to allocate four main stages of its development [14, p. 46]. Namely:

- Stage I – 2004-2009;
- Stage II – 2010-2018;
- Stage III – 2019-2020;
- Stage IV – 2021-2022.

Since there is a certain discrepancy between the norms regarding the legal regulation of emphyteusis, namely in the Civil Code [5] and the Land Code [10] of Ukraine, it is considered necessary to introduce appropriate changes, specifically in terms of coordination and compliance of civil with land legislative norms.

### **General Principles of Concluding Emphyteusis Agreements**

Notably, the conclusion of emphyteusis agreements in Ukraine during 2004-2006 took place according to the norms of civil legislation only, i.e., Chapter 33 of the Civil Code of Ukraine [5], which governed emphyteutic land use. The parties to such an agreement, when entering into an agreement on emphyteutic land use, were guided exclusively by the norms of the Civil Code of Ukraine [5], and since 2007, they also had to consider the norms of Chapter 16-1 of the Land Code of Ukraine [10].

The above-mentioned norms (civil and land law) emphasise that the sole basis for using someone else's agricultural land for agricultural use is an agreement concluded between its parties. V. Urkevych [13] is right that the emphyteusis agreement “is concluded according to the Civil Code of Ukraine” [5] and should also “consider the norms of the Land Code of Ukraine” [10]. V. Urkevych notes that the Civil Code of Ukraine [5] does not hold any special requirements concerning the content and terms and conditions of the agreement for the establishment of emphyteusis. According to the researcher, since in practice there are certain difficulties with the conclusion of such agreements (including in terms of establishing mandatory essential terms and conditions of the emphyteusis agreement, conducting land and environmental protection measures to preserve the object of the agreement), they usually include conditions inherent in the land lease agreement [15].

Starting to consider the issue of concluding an emphyteusis agreement, it is necessary to pay attention to the Law of Ukraine No. 340-IX “On Amendments to Certain Legislative Acts of Ukraine on Combating Raids” of December 5, 2019 [16]. The legislator makes provision for the possibility of certifying emphyteusis agreements in a notarised manner: from private or public notaries. These rules regarding the notarisation of emphyteusis transactions should be interpreted as follows: “must be notarised”. Furthermore, the notary, together with the participants of such a transaction, will take part in the preparation of the emphyteusis agreement, and will take all necessary measures to verify all the circumstances of the agreement for compliance with the current legislation, including the Civil Code [5] and the Land Code of Ukraine [10], the Law of Ukraine “On Notary” [17], other regulations and laws of Ukraine to protect civil and land rights, as well as the legitimate interests of the parties to such a transaction.

If an emphyteusis agreement is to be concluded with the involvement of public or private notaries, the latter, apart from the relevant chapters of the Civil Code [5] and the Land Code [10] of Ukraine, must also follow notarial norms. First, this applies to the Law of Ukraine “On Notary” [17], the Family Code of Ukraine [18], the Law of Ukraine “On State Registration of Real Rights to Immovable Property and Their Encumbrances” [19], as well as other sub-legislative acts, namely the Procedure for Performing Notarial Acts by Notaries of Ukraine [20]. D. Fedchyshyn, I. Ignatenko, M. Shulga believe that an important “advantage” of the emphyteusis agreement is “the absence of strictly regulated requirements for the content of such an agreement”, unlike other land agreements [8, p. 110].

### Conditions and Grounds for Concluding Emphyteusis Agreements

As follows from the analysis of regulations, and as noted by researchers of the legal institution of emphyteusis, including D. Fedchyshyn, I. Ignatenko, M. Shulga [8, p. 153], the legislators did not make provision for “essential provisions” regarding the conclusion of the above-mentioned agreement. When entering into an emphyteusis agreement, it is worth remembering that there are essential and supplementary terms and conditions of agreements. Considering the question of the essential terms and conditions of the above-mentioned agreement, they should also follow from Article 132 of the Land Code of Ukraine [10], which sets requirements for the content of transactions where the object is land plots. Such information about the land plots themselves or essential terms and conditions includes:

- firstly, information (or documents) confirming the landowner’s right to this object;
- secondly, such a transaction is not possible if a ban has been imposed on the land plot, i.e., information about its absence is required;
- thirdly, such a transaction is not possible if the notary does not have information on the agricultural plot regarding the restriction (available or absent) of its use for its intended purpose
- fourthly, this is the moment of transfer of the right of use to the land plot [21].

The initial essential condition of an emphyteusis agreement is a special object of such a transaction, i.e., an agricultural land plot. The main legal features of agricultural lands are their provision for the needs of agriculture, as well

as for use in the field of agricultural production. The specific features of agricultural land plots are as follows: firstly, this is a limited area and location; secondly, these lands simultaneously act as a real estate object and the main method (means) of production in agriculture.

It is worth recalling that the Order No. 548 of the State Land Committee of July 23, 2010, approved the classification of types of intended use of land [22], which should guide the parties to the emphyteusis agreement when accepting agricultural land for use. Noteworthy are the statements of researchers, namely E. Yurchenko [9], that not all agricultural land is the object of emphyteutic relations.

As for the study of emphyteutic legal relations, it is worth highlighting the dissertation thesis of E. Yurchenko [9]. The author concludes that guided by the norms of Part 2 of Article 56 and Part 2 of Article 59 of the Land Code of Ukraine [10], the right of emphyteusis can be established on the land of the water fund, as well as on forestry lands. E. Yurchenko is also correct in that only in the case of receiving a land share in kind, their owners can conclude the above-mentioned emphyteusis agreement [9].

It is worth identifying three groups of agricultural land that can be objects of emphyteutic legal relations, namely: 1) land of commercial agricultural production; 2) land of private farms; 3) farmland. It should be remembered that under the emphyteusis agreement, the owner of such agricultural land remains its owner in the future. Thus, the text of the emphyteusis agreement must specify as follows: the land plot with the location determination and especially its cadastral number; the area, purpose, including the composition of the land, etc.

The analysis of the norms of Part 1 of Article 102-1 of the Land Code of Ukraine [10] suggests that the conclusion of an emphyteusis agreement should occur according to the norms of the Civil Code of Ukraine [5]. The parties to such an agreement are two persons: 1) the owner of such an agricultural plot, and in some cases – their representative, who has duly executed powers. Notably, if the tenant wishes to transfer the leased agricultural plot to emphyteusis, then the land legislation (Article 4 of the Law of Ukraine “On Land Lease” [23] prohibits this, since such person is not the owner of such agricultural land, the same rule applies to persons who have a land plot on the right of permanent use; 2) emphyteusis user (i.e., the future land user), which can be either one person or several (individuals), as well as legal entities.

P. Kulynych claims that land users under the emphyteusis agreement can only be persons who, according to the Land Code of Ukraine [10], have the right to become owners of Ukrainian agricultural land. According to Kulinich, both foreigners and stateless persons cannot acquire emphyteusis, except in cases of its inheritance [24]. Equally important is the following condition of the emphyteusis agreement – the validity period of such a transaction. It is worth remembering that in the original wording, emphyteusis as a long-term right, according to Article 408 of the Civil Code of Ukraine of 2003 [5] could be concluded for a “certain period”, and it was also not forbidden to set an “indefinite period”. However, a specified article regarding the term of the emphyteusis agreement was amended twice, including by the Law of Ukraine No. 1423-IX “On Amendments to Certain Legislative Acts of Ukraine on Improving the System of Management and Deregulation in the Sphere of Land Relations” of April 28, 2021 [13].

Notably, the corresponding amendments to the norm regarding the term of the emphyteusis agreement were introduced by the Law of Ukraine No. 2498-VIII "On Amendments to Certain Legislative Acts of Ukraine on Resolving Collective Land Ownership, Improving Land Use Rules in Agricultural Land, Preventing Raids and Promoting Irrigation in Ukraine" on July 10, 2018 [12], but they concerned only the norms of Part 4 of Article 102-1 of the Land Code of Ukraine, having established that the term of use of a land plot of state, municipal, and private ownership for agricultural needs (emphyteusis) may not exceed 50 years [10].

That is, the legislators introduced changes regarding the term of validity of emphyteusis in the Land Code of Ukraine [10] earlier than in the Civil Code of Ukraine [5]. Guided by the norms of Part 2 of Article 408 of the Civil Code of Ukraine [5], as a conclusion, in an emphyteusis agreement (in the text itself), the term of validity of such a transaction cannot be set for more than fifty years. Furthermore, a mandatory condition of the emphyteusis agreement is the amount of payment for the use of such a land plot, which, as a rule, is established by the parties themselves (by mutual agreement between them).

However, there are certain exceptions to this rule. They relate to cases when the object of such a transaction is agricultural land belonging to two categories of owners: firstly, this is state-owned land, and secondly, this is the land of territorial communities (i.e., communal property). This is established in the Law of Ukraine No. 340-IX "On Amendments to Certain Legislative Acts of Ukraine on Combating Raids" of December 5, 2019 [16]. The legislator prohibits reducing the amount of payment under an emphyteusis agreement (during its validity period), if the conclusion of such a transaction was preceded by a certain procedure for conducting land auctions. A similar rule also applies to cases of renewal of emphyteusis agreements.

The next necessary condition of the emphyteusis agreement is the rights and obligations of the parties to such a transaction. Notably, the legislators left the above-mentioned norms in the Civil Code of Ukraine [5] in its original wording. The basic rights of the owner of agricultural land include the reception of a proper payment for use from the user, and the right of the owner to claim the intended use of the land transferred to them by the land user. However, the owner of the emphyteusis object has certain obligations. The main one is the non-interference or obstruction of the emphyteusis by the owner in the use of the agricultural land transferred to them. If disputes arise between the parties to the emphyteusis agreement, they can resolve them peacefully (through negotiations and consensus) or in court.

When drafting the text of the above-mentioned agreement, it is necessary to make provision (legislatively prescribed) for a "pre-emptive right" of the owner to acquire emphyteusis, in case of its sale by the emphyteusis user (i.e., the owner of property (agricultural land), as an alienator, has the right to acquire the alienated real right). It is also worth recalling that the owner, in some cases, has the right to receive *laudemia* (according to the norms of the Civil Code of Ukraine) [5]. From the standpoint of this study, it is worth highlighting the Law of Ukraine No. 1423-IX "On Amendments to Certain Legislative Acts of Ukraine on Improving the System of Management and Deregulation in the Sphere of Land Relations" of April 28, 2021 [13]. The legislative act grants the right to choose two circumstances in the

text of the emphyteusis agreement: the right of the emphyteusis user to transfer the land plot received by them for rent in the future, or the owner has the right to establish a ban on the transfer of such land (for rent).

It is advisable in the above-mentioned transaction to make provision for the obligations of the emphyteusis user, which are established in Article 410 of the main civil legislative act – the Civil Code of Ukraine [5]. One of these obligations is payments, including for the use of the transaction object. Guided by the specified act [5] (as well as the land legislation of Ukraine [10]), it is advisable to specify (in the text of the agreement) the use of the object of the transaction for the "intended purpose" (according to the established classification of types of intended purpose of state land) [13].

In the text of the emphyteusis agreement, it is also necessary to specify the obligation for the emphyteusis user to properly handle the agricultural land transferred to them, to prevent "deterioration of the environmental situation" in the future.

There is a need to establish a condition in the text of the emphyteusis agreement for preserving the transaction object. The land user, using the land, must properly handle the land transferred to them for use to prevent deterioration of the environmental situation.

If the land user (emphyteusis user) violates the conditions for exercising the right of land use, the owner of such a land plot must apply to the court for protection of their rights to use the specified land plot for its intended purpose, since all disputes regarding the exercise of the parties' powers are resolved only in court. Furthermore, the parties to the emphyteusis agreement can use the services of a mediator to resolve this dispute out of court.

The next essential condition of such an agreement is the right to alienate the use of agricultural land. Notably, considerable changes regarding the procedure for alienation by an emphyteusis user in the next object of the emphyteusis agreement were made by the above-mentioned Law of Ukraine No. 1423-IX of April 28, 2021 [13]. Therefore, the text of the agreement should emphasise that the object of the agreement may be alienated by the emphyteusis user and the next land user.

It should be emphasised that when an emphyteusis user uses communal or state-owned agricultural land, the land user is limited in relation to a certain disposal of it. Namely:

- 1) the emphyteusis user cannot alienate the object of the transaction;
- 2) the emphyteusis user cannot transfer the above-mentioned object to the authorised capital;
- 3) the emphyteusis user cannot pledge the object.

The same occurs in case of acquiring emphyteutic land use at auction. If the parties wish to specify the procedure for its implementation in the content of the transaction, they must be guided by the norms of Article 411 "Alienation of the right to use a land plot" of the Civil Code of Ukraine [5].

The next essential condition of an emphyteusis transaction is the mandatory determination of the amount of interest and the procedure for their payment, from the sale price of the real right that the owner of an agricultural land plot will receive, in case of later sale of the right to use this land plot by the emphyteusis user. This is emphasised in Part 5 of Article 411 of the Civil Code of Ukraine [5]. In addition, a substantial condition of the emphyteusis agreement is the



grounds for termination of the emphyteusis agreement. Article 102-1 of the Land Code of Ukraine [10] (to which changes and amendments were introduced), established more grounds for termination of the emphyteusis agreement than in Article 412 of the Civil Code of Ukraine [5], which remained in the original wording [12, p. 46].

When summarising the norms of civil and land legislation regarding emphyteusis legal relations, the emphyteusis agreement should provide as much as possible for the grounds for termination of such a transaction. Guided by the norms of the specified Law of Ukraine No. 340-IX of December 5, 2019 [14] regarding amendments to the Land Code of Ukraine [10] the text of the emphyteusis agreement can establish a condition for the renewal of such an agreement.

Minor terms and conditions of emphyteusis include other conditions of such a transaction, which are also important for the parties. For instance, such terms and conditions may make provision for cases and cases of return of a land plot to its owner. The authors of this study agree with T. Kharitonova that as added supplementary terms and conditions, the text of the emphyteusis agreement should make provision for the risks of accidental damage or destruction of the emphyteusis object [25, p. 171]. It is advisable to establish in the emphyteusis agreement that the land tax payer, by agreement of the parties, is an emphyteusis user. D. Serheieva and H. Zhaldak are right that emphyteusis agreements are remarkably similar to the “act of purchase and sale”, but unlike the latter, it “limits the term of use” of a land plot [26].

### Conclusions

The conducted research shows that the main advantages of emphyteusis land use both in Ukraine and in other countries

include the fact that the emphyteusis receives not only a long-term, alienable, but also an inherited real right to agricultural land plots. The significance of emphyteusis agreements lies in the fact that emphyteutic land use will contribute to the production of high-quality agricultural products to meet the population and enterprises of Ukraine with food and agricultural raw materials. Before entering into an agreement on the right to use someone else's land plot for agricultural needs, the parties must be properly aware of all the nuances of legal regulation of emphyteutic land use. Notarisation of emphyteutic land use occurs by entering into and notarising emphyteusis agreements. Notarial proceedings for concluding emphyteutic land use transactions comprise several components. A significant role in the notarial procedure for certifying emphyteutic land use transactions is played by identifying the state of familiarisation of the parties to the transaction with the novelties of legal regulation regarding the right to use land plots for agricultural needs. Guided by the norms of the Civil Code and Land Code of Ukraine, the Family Code of Ukraine, the Laws of Ukraine: “On Notary”, “On State Registration of Real Rights to Immovable Property and Their Encumbrances”, other laws and regulations, the authors of this paper described the main requirements for the procedure for concluding and notarising emphyteusis agreements.

The texts of agreements for the right to use someone else's land plot for agricultural needs must specify mandatory or basic conditions that follow from the legal regulation of emphyteutic land use. Supplementary or non-essential terms and conditions are specified in the texts of emphyteusis agreements only by mutual consent and at the request of the parties to such a transaction.

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## Особливості укладення договору щодо емфітевтичного землекористування в Україні

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**Анотація.** Актуальність статті зумовлено тим, що в Україні емфітевтичне землекористування в останні роки виступає одним з основних способів використання земель сільськогосподарського призначення. Цьому сприяло запровадження суттєвих змін до правового регулювання в державі емфітевтичного землекористування, яке ґрунтувалося на кращих традиціях закордонного досвіду використання сільськогосподарських земель. Відсутність у законодавстві обов'язкових реквізитів договору емфітевзису, які можуть у майбутньому стати однією з причин визнання таких правочинів недійсними, також спонукає до проведення цього дослідження. Предметом вивчення виступають нормативні та законодавчі акти щодо регулювання емфітевтичних правовідносин в Україні. Мета роботи полягає в характеристиці основних положень договорів емфітевзису (права користування чужими земельними ділянками для сільськогосподарських потреб), особлива увага приділена автором умовам таких правочинів. У статті розглядаються новели правового регулювання права користування чужими земельними ділянками для сільськогосподарських потреб та основні істотні умови укладення договорів емфітевзису (землекористування) в Україні. Під час проведення дослідження використовувалися такі методи пізнання: історичний, порівняльно-правовий, логіко-нормативний, системно-структурний. У процесі дослідження здійснено історико-правовий аналіз становлення правового регулювання права на користування чужою сільськогосподарською земельною ділянкою в незалежній Україні. Особливу увагу приділено характеристиці правового регулювання права щодо користування чужою земельною ділянкою для сільськогосподарських потреб (емфітевзису) у Цивільному та Земельному кодексах України. З'ясовано умови договору емфітевзису та особливості реалізації права емфітевтичного землекористування. У дослідженні детально проаналізовано порядок укладення та вимоги до нотаріального посвідчення правочинів емфітевзису. Виокремлено основні та додаткові умови укладення договорів на емфітевтичне землекористування. Із ціллю захисту прав та інтересів сторін емфітевтичного землекористування договір емфітевзису повинен бути нотаріально посвідченим. У текстах договорів емфітевзису повинно було відображено перелічені у дослідженні основні обов'язкові умови укладення договору, та за бажанням сторін – інші умови. Практичну цінність дослідження складає перелік істотних та додаткових умов договору емфітевзису, які повинні бути передбачені сторонами в тексті правочину, з метою захисту своїх прав та інтересів

**Ключові слова:** договір емфітевзису, сільськогосподарське землекористування, нотаріальне посвідчення правочинів щодо емфітевтичного землекористування