

## Superficies as one of the legal forms of land use in farming activities

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**Abstract.** The relevance of the study is due to the emergence of new agricultural entities in Ukraine – farms of various types, which need not only to engage in agricultural production but also to develop other areas of activity, in particular, construction. The absence of settlement in the farm legislation of land use based on superficial agreements and the possibility of further disputes between the parties is one of the grounds for conducting this study. The purpose of the study is to outline the formation and development of the superficies institute in Ukraine during 1990-2022 and establish the specific features of introducing it into farming activities. The study is conducted using a complex of general scientific and special methods of cognition. The dialectical method helped to determine the regularities of the development of the institution of superficies from the time of the Roman Empire to the present. The comparative legal method is used in the examination of the formation and development of farm land use in the modern Ukrainian state. In the course of the study, a historical and legal analysis of the peculiarities of using someone else's land plot, which has a intended purpose-construction, is conducted. A thorough comparative legal analysis of the norms of the Civil and Land codes of Ukraine concerning superficial land use is conducted. Originalities of legal regulation of land use in farms of independent Ukraine are considered. It is proposed to supplement Article 12 of the Law of Ukraine “On farming” by granting farms the right to conclude emphyteusis and superficies agreements. The main terms of superficies' contracts – the right to use someone else's land plot for development, are outlined. The specific features of the conclusion of such transactions are determined, it is noted that the registration of a superficial contract in the State Register of property rights to immovable property is an electronic proof of its conclusion. The practical value of the study lies in the fact that the proposals formed on the basis of its results can be used to improve the current legislation

**Keywords:** legislation; property law; contract; State Register of property rights to immovable property; someone else's land plot; development; agricultural production

### Introduction

Ukraine has unique land resources. It also has favourable natural and climatic conditions for efficient agricultural production. The transformations that took place in Ukraine after the declaration of independence, in particular, land and agrarian reforms, contributed to the development of new forms of agricultural production entities. Ukraine, as an agrarian state, is tasked with becoming a leading producer of agricultural products, primarily, high-quality and safe food products. One of these entities is farms, which, according to quantitative indicators, form the basis of agricultural producers of the state. Both in Soviet Ukraine and at the beginning of the formation of an independent Ukrainian state, superficies were not discussed since the main type of land use, in particular, by farms, was rent. The introduction of the superficies institute in independent Ukraine took place only in 2004, with the entry into force of the Civil Code of Ukraine (2003), and later in 2007 it was implemented in the Land Code of Ukraine (2001).

Superficies in the activity of a farm is an indefinite or long-term (up to 50 years on land of communal and state ownership), alienated real right to someone else's property, which is subject to inheritance, which provides for the acquisition by a farm (a legal entity or a farmer – as an individual entrepreneur) of the right to own and use a land plot belonging to the alienator, for the purpose of building structures, buildings on it, with their subsequent operation, in accordance with the intended purpose, as well as for the purpose of obtaining income, which is subject to state registration in the State Register of Rights. Mostly superficies arise on the basis of the relevant contract, and only in some cases – on the basis of a will and are subject to mandatory state registration.

The institution of superficies has been considered in textbooks and manuals, but among the types of land use of farms, insufficient attention is paid to superficies of land use (Baik *et al.*, 2021; Shulga, 2023). S. Reznichenko *et al.* (2019) conducted a comparative analysis of legal

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institutions: leases, emphyteusis on superficies, describing their advantages and disadvantages. I. Ilkiv (2021) analysed the legal regulation of superficies in Ukraine, the definition of the concept of “superficies”, and pointed out the shortcomings, but in most cases, this concerned the transfer of state and municipal property under such an agreement.

N. Maika (2018) as a practising state registrar, describing the essential terms of the superficies agreement, draws attention to the fact that the right to build a land plot is a certain restriction of the owner of such a plot, so if there is no payment condition in the contract text, it is suggested to specify the terms of compensation for losses caused by the user. The author divides superficies into primary and derivative contracts, but the right to transfer superficies by inheritance is not considered.

Considering the issue of farm land use, M. Shulha and P. Kulynych (2022) indicate the possibility of obtaining land plots for the construction of a workshop or other production facilities by a farm, but do not identify the possibility of using land on the basis of a superficies agreement. In monographic studies by P. Kulynych (2021), Yu. Chumak (2021), and M. Dolynska (2022a), issues of farm land use are considered and the norms of land legislation regarding property rights to land are indiscriminately indicated, but the issue of superficial relations with the participation of such farms are not highlighted.

The history of the establishment of the superficies institute, in particular, changes in the legal regulation of the superficies Institute during 2004-2022, is still insufficiently investigated. In addition, the mandatory details of the superficies agreement have not yet been identified and the importance of the superficies agreement in the activities of farms has not been justified.

The purpose of the study is to analyse the development of legal, in particular, legislative, regulation of the superficies Institute in the Ukrainian state, determine the main elements of the superficies agreement, and establish the specific features of introducing the superficies institute into farming activities.

The examination of the development of superficial land use in the activities of farms uses general scientific and special legal methods. In particular, the use of the dialectical method allowed determining the patterns of development of the institution of superficiality from the Roman Empire to modern Ukraine.

Using the comparative legal method, the issues of the evolution of land use by farming entities in Ukraine during 1990-2023 are revealed. By the method of analysis, an assessment of regulatory legal acts regulating superficial land use is formed.

The modelling method was used in the development of proposals for amendments to Article 12 of the Law of Ukraine “On Farming” (2003) regarding securing the right to use land by farmers on the basis of superficies agreements.

Hermeneutical and analytical methods are used to analyse the content of scientific achievements of researchers. The papers of researchers are processed: historians, practitioners of civil and land law, of the formation and development of the institute of superficies on European lands, of which the Ukrainian territory is a part.

Based on the axiological approach, an estimated (qualitative) analysis of the legal regulation of modern superficial land use by farms is conducted.

## Genesis and evolution of legal regulation of the right to use a land plot for construction

The superficial institute, like the emphyteusis institute, has a long history, and both are derived from the land lease Institute.

The right to use a land plot for development appeared around the 3<sup>rd</sup>-2<sup>nd</sup> century BC, during the Roman Empire (Vysitska, 2020). In the Roman Empire, it was initially only public in nature since the state owned all the lands granted on the basis of a State Power Act. Since at that time, there was a ban on the alienation of both state and municipal land to citizens, the superficies Institute was used to solve the problem of providing housing for persons in need (Surzhenko, 2014).

According to O. Pidopryhora (2001), Justinian’s legislation established the concept of superficiality. In the time of Rome, the superficiary had the right to use and dispose of buildings that they built on such a land plot (including donation, purchase, and sale, pledge, inheritance), which was not limited to time. The only requirement was the timely payment of rent for such a land plot (*solarium* or *vectigal*). As noted by V. Marchuk (2007), initially the praetor defended the rights of the superficiary only through lawsuits and interdicts, and only in the classical period of development did a new stage in the development of the institution of superficiality come. Superficies began to be considered as a thing that is legally separate from the surface and has a “separate legal position” (D.44.7.44.1). That is, superficies accompany the land plot (Fedushchak-Paslavska, 2012).

As V. Kutateladse (2011) states, the relationship of using someone else’s land plot for development was settled in sufficient detail, usually with the help of an appropriate contract. From Ancient Rome, the institution of superficies was borrowed without substantial changes by almost all European countries (Bodnarchuk & Bodnarchuk, 2023).

The introduction of the institution of superficies and the Institute of emphyteusis, in independent Ukraine took place only in 2004, with the entry into force of the Civil Code of Ukraine (2003), which is devoted to a separate chapter 34 of the legislative act and includes only five articles (413-417).

The above-mentioned legal institution was implemented in the land legislation by Law of Ukraine No. 997-V (2007) by supplementing the act with Chapter 16-1, which consists of only one article, the content of which mainly duplicates the relevant norms of the Civil Code.

According to O. Surzhenko (2014), the modern Ukrainian Institute of superficies “differs substantially from the Roman one”, in particular in terms of the terms of the contract and the grounds for its termination. Notably, only two changes were made to Chapter 34 of the Civil Code regarding the legal regulation of the superficies agreement during 2008-2021. In contrast, Article 102-1 of the Land Code (which regulates the legal basis of emphyteusis and superficies) was supplemented and edited by six legislative acts.

In particular, amendments to Chapter 34 of the Civil Code of Ukraine (2003) on superficial land use were introduced:

- ▶ The Law of Ukraine No. 509-VI (2008) limited the term of validity of the superficies agreement for both state-owned and communal land to 50 years;
- ▶ The Law of Ukraine No. 2518-VI (2010) amended (edited) part two of Article 417 concerning “cultural legacy monuments”.

It is necessary to highlight the following legislative acts that introduced amendments and additions regarding the

legal regulation of superficies agreements to Article 102-1 of the Land Code of Ukraine (2001):

- ▶ The Law of Ukraine No. 2404-VI (2010) was supplemented with a new basis for termination of the superficies agreement, which was concluded within the framework of public-private partnership.

- ▶ The Law of Ukraine No. 5070-VI (2012) introduced new grounds for termination of the superficies agreement: from the time of transfer of such a land plot to the ownership of a territorial community or state on the basis of an alienation agreement for public needs or the motive of public necessity.

- ▶ The Law of Ukraine No. 340-IX (2019) gives the opportunity to the parties to conclude and certify the above-mentioned transactions in a notarised manner;

- ▶ The Law of Ukraine No. 1423-IX (2021) changed the procedure for using other people's land plots (emphyteutical and superficialised land use), in particular in terms of the grounds for termination of the superficies agreement – by agreement of the parties (in accordance with the procedure established by law).

Neither the Civil Code of Ukraine (2003) nor the Land Code of Ukraine (2001) establish the concept of superficies, although, for example, Article 413 of the Civil Code provides for the grounds for the emergence of superficies of land use and its main criteria.

Researchers, considering the criteria established by the legislator, formulate the concept of superficiality, in particular, P. Kulynych (2004), Ye. Kharytonov, and N. Golubieva (2009), as well as the author of this study. As M. Dyakovych (2016) states, “a superficies agreement is a legal fact that gives rise to property rights to someone else's property”, but it is difficult to agree with the opinion set out in the same paper that superficies are a restriction or encumbrance of a land plot.

The characteristic features of superficies are: the intended purpose of the land plot (for the construction of buildings, structures, and houses); long terms, alienation, and heritability.

### Types of land use in farms of Ukraine

The land reform in 1990 in Ukraine contributed to the emergence of new economic formations on the land, in particular peasant farms, the legal successors of which are modern farms.

According to part one of Article 6 of Land Code of Ukraine (1990), citizens of the state had the right to receive land for peasant farming in “lifelong inherited possession”. The Law of Ukraine No. 2009-XII (1991) “On Peasant (Farming) Economy” granted the right to the owner of the farm (a citizen of Ukraine) to make a choice regarding obtaining a land plot for conducting commercial agricultural production: in lifelong inherited possession, in private ownership, or on lease terms (in accordance with the procedure established by law).

In Article 4 of the new version of the Land Code of Ukraine (1990) since 1992, a list of lands that can be transferred to private or collective ownership has been established, among which the primacy belonged to the management of a peasant farm. In particular, the norms of articles 50-55 of the Act established the grounds and process for granting land plots for such farming.

The Law of Ukraine No. 3312-XII (1993) settled the land use order of peasant farms. Notably, the norms in articles 4-7, 13 of the Law of Ukraine No. 3312- XII mostly

duplicated the previous provisions of articles 5-7 of the Law of Ukraine “On Peasant (Farming) Economy” (1991).

The next stage in farm land use began at the beginning of the 21<sup>st</sup> century in accordance with: Article 31 of the new Land Code of Ukraine (2001) and Article 12 of the Law of Ukraine No. 973-IV “On Farming” (2003), which contain similar regulations on the establishment of three main types of farm land use.

The first type of land use by the legislator included land owned by a farm as a legal entity. Land belonging to members of the farm (citizens of Ukraine) belonged to the second group. However, the right to own and use these lands is still exercised by the farm itself. The third group consists of land leased by such a farm. Farms may also have a different legal regime for land since it can be purchased with the common funds of the spouses or purchased with the common funds of all members of the farm (Dolynska, 2022a).

Substantial changes in the legal regulation of farming, including types of farm land use, have taken place in accordance with the Law of Ukraine No. 1067-VIII (2016). The legislative Act introduced a new type of farming activity – a farmer who functions as an individual entrepreneur, and the new version contains not only Article 31 of the Land Code of Ukraine (2001) but also part one of Article 12 of the Law of Ukraine “On Farming” (2003) with the same content. Analysing the above-mentioned norms, it should be noted that the legislator divides farm land into two main types of land use, and not into three (as it was established earlier).

To the first type of land use by the legislator, land plots belonging only to members of such a farm (citizens of Ukraine) on the right of ownership or use are assigned.

The second type of farm land use includes land plots belonging to a farm, in particular, both on the right of ownership and on the right of use.

In addition, the Law of Ukraine Law of Ukraine No. 1067-VIII (2016) abolished the specific features of granting land plots for farming in Ukraine, since from now on the process of obtaining land plots – both state and municipal property for farming – is conducted on a general basis, in accordance with the State Land Code.

Farms can operate in five types of economic formations:

1. A farm is a legal entity that, in turn, is divided into:

- ▶ a legal entity that has the status of a family farm (the activities of which are based on the work of members of one Ukrainian family (in accordance with Article 3 of the Family Code of Ukraine);

- ▶ a legal entity created by one citizen of Ukraine;

- ▶ a legal entity that is a family entity of citizens of Ukraine (in accordance with Article 9 of the law of Ukraine “On Farming”).

2. A farm without the status of a legal entity is a form of entrepreneurial activity of an individual entrepreneur, which in turn is divided into:

- ▶ a family farm created on the basis of the activities of an individual entrepreneur and his family members (in accordance with Article 3 of the Family Code of Ukraine) who are citizens of Ukraine,

- ▶ a farm (farmer) that operates on the basis of the sole activity of an individual entrepreneur (citizen of Ukraine).

It is also advisable to highlight a new form of farming – a family farm, which operates on the basis of registration of an individual entrepreneur as members of the same family, since the members of such a family farm are its “co-entrepreneurs”.

Farming as an economic formation only after the relevant state registration, which can also be conducted by a notary, acquires the status of a full-fledged agricultural subject and a participant in legal relations of various types, in particular, regarding the grounds for land use.

The vast majority of farms use leased land in their practical activities. It can be agreed with D. Fedchyshyn *et al.* (2019) that due to the long-term ban on alienation of agricultural land, emphyteusis was considered as an alternative to the contract of purchase and sale of agricultural land in Ukraine.

There is reason to say that contracts for the use of land for construction – superficieses have not yet become as widespread in Ukraine as emphyteusis, but they are the future. Therefore, it would be advisable to make appropriate changes to Article 12 of the Law of Ukraine “On Farming” (2003) since the law of both superficiesal and emphyteusic land use by farms has not yet been allocated by the legislator.

### Superficies agreements in the land use of farms in Ukraine

Superficies agreements that occur in the activities of farms in Ukraine are still not widely used. The war and certain restrictions of certain European countries on the export of agricultural products to their states encourage Ukrainian farmers to look for land plots not for agricultural purposes that are suitable for housing construction, but primarily for the construction of workshops that will process agricultural products, warehouses, as well as the construction of farm shops, in particular those that will sell products grown on farm lands – both raw materials and goods created by its processing, such as cereals, macaroni, cheeses, yoghurts, sour cream, meat products, etc.

The importance of the consumption of organic products by the state’s population is highlighted by researchers and practitioners, in particular D. Fedchyshyn *et al.* (2018). Notably, the construction of farmers’ own shops selling eco-products, in particular on the right of superficiesal land use, will meet the interests of not only farmers but also ordinary Ukrainian buyers. Not just to the emphyteusis contract (Fedchyshyn *et al.*, 2018), but the legislator has not allocated any special conditions for the superficieses agreement either. T. Kharytonova (2014) argues that leases and superficieses are very close types of legal use, and suggests using the provisions to the essential terms of the superficieses contract of Article 15 Law of Ukraine “On Land Lease” (1998). It should be emphasised that there is a reduction in the essential terms of land lease agreements by making changes to the above-mentioned article of the legislative act.

The drafting of a superficiesal transaction takes place in accordance with the current civil and land Ukrainian legislation, family and tax legislation, and is also subject to mandatory state registration in accordance with the Law of Ukraine “On State Registration of Property Rights to Immovable Property and their Encumbrances” (2004). In the case of notarisation of the superficieses agreement, the notary, in addition to the above-mentioned legislation, also applies notarial legislation.

Since there have been substantial changes in the legal regulation of the institution of superficieses, and the issue of concluding contracts with the participation of farms has not been considered, it is necessary to focus on certain issues of concluding the above-mentioned transactions. When entering into a superficieses agreement, it is necessary to

consider the legislation and current practice, in particular judicial and notarial, in terms of providing for the terms of the superficieses agreement in the content of the transaction, especially when certifying such a transaction with the participation of farms. Before entering into a contract, the parties to a superficiesal transaction must discuss in detail all the essential conditions (criteria) at their discretion (since the legislator does not establish mandatory details), which should be reflected in the final text of the contract.

In accordance with the requirements of the superficiesal legislation, the subject of the superficiesal contract is the property right to a land plot for the intended purpose “for development”, in other words, farms must use land under a clearly established legal regime. The Resolution of the Cabinet of Ministers of Ukraine No. 821 (2021) approved a new Classifier of types of intended use of land plots.

Regarding the study subject, it is necessary to identify the following subcategories of land plots that have the right to be used for construction by farms: intended for the construction and maintenance of commercial buildings, and the construction and maintenance of residential buildings, outbuildings, and structures (household plot). However, this construction can only be conducted by a family farm, the members of which members are only the family of a farmer who need their own housing. Land plots intended for the construction and maintenance of tourist infrastructure and public catering establishments are important for effective agricultural production by farmers.

The legal regulation of superficieses in Ukraine is imperfect. Its main disadvantages are listed by I. Ilkiv (2021): the absence of pronouncements to the form of superficieses, clear terms of the contract, special requirements provided for invalidating such a contract or its termination and termination of the right to use a land plot for development. The superficieses agreement is consensual, is concluded in writing, can be notarised by mutual agreement of the parties to the transaction, and is subject to mandatory state registration.

Analysing regulatory and legislative acts and the practice of concluding land transactions, the author suggests the following elements of superficieses contracts. In the text of the land plot agreement (considering the provisions of Article 132 of the Land Code of Ukraine, 2001), in addition to its intended purpose, it is necessary to indicate its location, cadastral number, and dimensions. In the case of the notarisation of a superficiesal contract, the obligation to establish the legal capacity of a farm, including the powers of its representative, is assigned to the notary certifying such a transaction. In the text of the contract, it is also necessary to indicate the document confirming the ownership of the land plot to its owner, the existing restrictions on the use of such a plot or their absence, and especially to check the absence of prohibitions on the land plot, the existing encumbrances and restrictions in its use.

In addition to the above, in the text of the superficiesal transaction, in particular with the participation of farms, it is proposed to specify: the boundaries of ownership and use of the subject of the contract by its owner; the rights of the user (farm), in particular regarding alienation (that is, the transfer of their powers to superficiesal land use); payment or gratuitous superficiesal land use; the term of validity of the concluded contract (consider the possibility of concluding a contract on private land without specifying the term and restriction for up to 50 years-on communal or state land);



acquisition by the land user (farm or an individual entrepreneur) ownership rights to the object built by them (in accordance with the requirements of the current civil, construction, and land legislation.

N. Ilkiv (2010) has a fair point, arguing that in this case, the owner of the land alienated under a superficial contract is “only its nominal owner”. In addition, in the specified agreement, the researcher recommends specifying: the procedure and terms for transferring the specified land plot under the transaction, including the conditions for its return to the owner; the rights and obligations of the parties are also a necessary element of the agreement; restrictions on superficial land use, which must be observed by the land user (farm); the grounds for termination of the superficial transaction must indiscriminately consider the requirements of both articles 416 and 417 of Civil Code (2003) and articles 101-2 of Land Code of Ukraine (2001); dispute resolution procedure, which arise from a superficial transaction.

The Law of Ukraine No. 1875-IX “On Mediation” (2016) introduced a legal sub-institute for resolving land disputes – through mediation, complementing the Land Code of Ukraine (2001) with Article 158-1, so it is advisable to suggest that the parties must indicate in the text of the superficies agreement the possibility of resolving disputes through mediation. That is, the right to resolve a dispute is first implemented through negotiations, a mediator, and only in the future – in court. The contract text should also specify the conditions for alienation and inheritance of superficialised land use.

The obligation to conduct state registration of a superficial contract in the State Register of real rights to immovable property (even in the case of non-notarised conclusion of such a transaction) follows from the requirements of Article 126 Land Code of Ukraine (2001) and Law of Ukraine No. 1952-IV “On State Registration of Property Rights to Immovable Property and Their Encumbrances” (2004). It is worth agreeing with M. Vashchyshyn (2013), who indicates the fact that, to legally fix the registration of a property right of superficies, it is necessary for the state registrar to make a corresponding entry in the state register of property rights. However, such registration can also be conducted by public or private notaries, even if such a contract was concluded only in writing. State registration of a superficial contract is electronic proof of its conclusion.

One of the advantages of superficies is that it is an alienable property right. Alienation can occur either under a purchase and sale agreement or under a donation or barter agreement (Maika, 2018). It is also necessary to add that the superficialist can transfer this right by inheritance or even conclude an inheritance contract.

The war in Ukraine in 2022 led to the seizure of part of the territory of the state and substantial human and material losses, in particular, deprived the right to both use and ownership of farm land and prompted the adoption of Laws of Ukraine: No. 2145-IX “On Amendments to Some Legislative Acts of Ukraine Regarding the Creation of Conditions for Ensuring Food Security Under Martial Law” (2022) and No. 2247-IX “On Amendments to Some Legislative Acts of Ukraine Regarding the Peculiarities of the Regulation of Land Relations in the Conditions of Martial Law” (2022), which introduced substantial changes to the current land legislation. These changes are “temporary in nature”, but they allow solving some problems during martial law (Bodnarchuk & Bodnarchuk, 2023), in particular,

superficial land use since the above-mentioned contracts were renewed for a period of only one year and without entering information in the State Register of property rights.

Researchers, including Ye. Udovytskyi (2022), Ye. Smolenko (2023), guided by the norms of sub-paragraph 1 paragraph 27 of section X “Transitional provisions” of the Land Code of Ukraine, state that the norms on automatic renewal of contracts without the will of the parties for a period of one year should be applied from the moment of introduction of martial law. Difficulties in concluding the above-mentioned agreements, in particular the superficies agreement, arise due to the fact that certain landowners were forced to leave their places of residence, remained in the occupied territory or went missing, died, defended their homeland at the front (are in captivity), and in some cases, they lost not only their housing but also their documents. This, in turn, creates problems both in confirming ownership of land plots, and in a certain period does not allow them to generate electronic signatures (Dolynska, 2022b).

T. Kharytonova and Kh. Hryhorieva (2023) believe that in the conditions of shaky food security in Ukraine, the importance of private farms will increase in order to meet the consumer needs. Such entities during martial law in the state are also farms, especially family farms. Since there is a lot of destruction in the state, therefore, obtaining a land plot for the construction of their own shops is one of the ways to expand sales of grown products and provide products of their own production to the average buyer. This standpoint is confirmed by information about ensuring food security by farms during the war in Syria (Linke & Ruether, 2021).

It is worth recalling that the legislator in Article 5 of the Law of Ukraine “On Farming” (2003) gave farms a “privileged benefit” to create a separate farmstead outside of localities (Dolynska, 2022a). If there is a vacant land plot next to this estate, which can be provided to the farm on the basis of superficial land use, the farmer has the right to use the opportunity to build, for example, a mini-hotel, camping, buildings intended for servicing tourist infrastructure and public catering establishments, and other structures necessary for conducting green tourism.

Since the war caused huge losses to farms (especially in the south and east of the state), and too high fuel prices do not allow for efficient management, there is a practice of Ukrainian farmers producing their own biofuels, that is, creating a separate unit with existing infrastructure. The above requires the implementation of certain construction on non-agricultural land, in particular, provided under the terms of a superficies agreement. Thus, the farm will create a full cycle for efficient agricultural production, in particular on a separate farmstead.

The adoption of the Law of Ukraine No. 1788-XII (2021) was supposed to be an incentive for the development of superficial land relations in the activities of farms, which sets out in a new version of Article 16 of the Law of Ukraine “On Farming” (2003) regarding the construction of both residential buildings and structures and outbuildings by such farms. However, the legislator granted the right to do this to a farm only on leased land. Therefore, it is necessary to resolve this problem and grant the farmer the right to build structures on the basis of superficial land use as well.

A farm that is interested in entering into a superficies agreement sees it as a material benefit since it becomes the owner of the built real estate. In particular, in the legal form

of a legal entity – the owner of such property is a farm; in the legal form of an individual entrepreneur – the owner of such property is a farmer if they work alone; and if the farm is created by members of the same family, then the owners are co-entrepreneurs of the farm, in accordance with the agreement on the creation of a family farm.

### Conclusions

The article analyses the normative legal and legislative acts on the regulation of superficial legal relations with the participation of farms in Ukraine, and the papers of researchers. The evolution of the formation of the institution of superficies from European states to modern Ukraine is examined and it is established that the reception did not take place in full.

The main elements of the superficies agreement were described, mandatory banking details were defined, and it was recommended to conclude these transactions in a notarised manner. Describing the development of the institution of superficies in independent Ukraine, a comparative analysis of the legal institution of superficies on the Civil and Land codes of Ukraine was conducted, common gaps in the regulation of superficies in them were identified, and additions and adjustments were proposed to improve the current Ukrainian legislation.

The study examines the development of legal regulation of farm land use during 1990-2023 and indicates that due to the war in Ukraine, land suitable for agricultural production suffered egregious losses and damage, which may be one of the grounds for changing their intended purpose, that is, from agricultural to non-agricultural.

Non-regulation by the legislation of certain issues of superficial land use (terms, payment) by farms may further lead to an increase in the number of legal disputes involving farms. In this regard, it is proposed to prescribe all key conditions and restrictions in the relevant contracts, which will avoid ambiguities and conflicts as much as possible, as well as define in these documents the possibility of resolving disputes through mediation.

The scientific originality of the study lies in the fact that it justifies all the advantages that superficies provide specifically for farms of various forms of legal relations, especially in the conditions of active military operations on the territory of Ukraine. In particular, it will be of great importance for farms to be able to build various premises for storing, processing, and selling their own products on non-agricultural plots, and construct various facilities necessary for the development of green tourism. The possibility of conducting such construction will have a substantial positive impact on the development of Ukrainian agribusiness.

Further research will consist in the investigation of findings of superficial legislation and analysis of judicial practice on the consideration of disputes involving various types of farms, the subject of which is superficial land use.

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None.

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## Суперфіцій як одна з правових форм використання земель у діяльності фермерського господарства

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**Анотація.** Актуальність дослідження зумовлено появою в Україні нових аграрних суб'єктів – фермерських господарств різного типу, які мають необхідність не лише займатися агровиробництвом, але й розвивати інші сфери діяльності, зокрема будівництво. Відсутність урегулювання в фермерському законодавстві землекористування на основі договорів суперфіцію та можливість виникнення в подальшому спорів між сторонами – одна з підстав проведення цього дослідження. Мета роботи – окреслити становлення та розвиток інституту суперфіцію в Україні протягом 1990-2022 років і з'ясувати специфіку впровадження у фермерську діяльність інституту суперфіцію. Дослідження проведено за допомогою комплексу загальнонаукових та спеціальних методів пізнання. Діалектичний метод сприяв визначенню закономірностей розвитку інституту суперфіцію від часів Римської імперії до сучасності. Порівняльно-правовий метод застосовано в дослідженні становлення та розвитку фермерського землекористування в сучасній Українській державі. У процесі роботи здійснено історико-правовий аналіз особливостей користування чужою земельною ділянкою, яка має цільове призначення – будівництво. Здійснено ґрунтовний порівняльно-правовий аналіз норм Цивільного та Земельного кодексів України щодо суперфіційного землекористування. Розглянуто новели правового регулювання землекористування у фермерських господарствах незалежної України. Запропоновано доповнити статтю 12 Закону України «Про фермерське господарство» наданням права фермерським господарствам укладати договори емфітевзису та суперфіцію. Окреслено основні умови договорів суперфіцію – права користуватися чужою земельною ділянкою для забудови. Визначено особливості укладення правочинів суперфіцію за участю фермерських господарств та наголошено, що проведення державної реєстрації суперфіційного договору в Державному реєстрі речових прав на нерухоме майно виступає електронним доказом його укладення. Практична цінність дослідження полягає в тому, що сформовані на основі його результатів пропозиції можна використати для вдосконалення чинного законодавства

**Ключові слова:** законодавство; речове право; договір; Державний реєстр речових прав на нерухоме майно; чужа ділянка; забудова; агровиробництво