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**ЗЕМЕЛЬНІ ПРАВОВІДНОСИНИ:
ОСОБЛИВОСТІ ЗАСТАВИ
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Стаття присвячена питанню особливостям договірних правовідносин при заставі земельних ділянок, визначенню сфери регулювання цих відносин на основі чинного законодавства та наукових позицій.

Проаналізовано зміст застави земельної ділянки як обмеження права власності заставодавця на земельну ділянку, яке встановлюється на підставі договору або в силу закону, та полягає у забороні землевласнику здійснювати правомочність щодо розпорядження земельною ділянкою без згоди заставодержателя (тобто, обов'язком землевласника є отримання згоди заставодержателя на здійснення права розпорядження земельною ділянкою), зумовленою необхідністю захисту майнових інтересів заставодержателя. Застава земельної ділянки є обтяженням земельної ділянки правом заставодержателя задовольнити свої майнові вимоги щодо ціни реалізації земельної ділянки у випадку невиконання боржником основного зобов'язання.

Визначено, що правовідносини, що виникають у зв'язку з передачею земельної ділянки у заставу, не є за своєю юридичною природою земельними правовідносинами, які для досягнення найбільшої ефективності правового регулювання можуть бути врегульовані переважно методами

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**LAND LEGAL RELATIONS:
PECULIARITIES OF PLEDGE OF
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The article is devoted to the issue of the peculiarities of contractual legal relations in the mortgage of land plots, determining the scope of regulation of these relations on the basis of current legislation and scientific positions.

The content of the mortgage of a land plot is analyzed as a restriction of the mortgagor's ownership right to the land plot, which is established on the basis of a contract or by virtue of law, and consists in prohibiting the landowner from exercising the authority to dispose of the land plot without the consent of the mortgagee (i.e., the landowner's obligation is to obtain the consent of the mortgagee to exercise the right to dispose of the land plot), due to the need to protect the property interests of the mortgagee. The mortgage of a land plot is an encumbrance of the land plot with the right of the mortgagee to satisfy his property claims regarding the sale price of the land plot in the event of the debtor's failure to fulfill the main obligation.

It has been determined that legal relations arising in connection with the transfer of a land plot as a pledge are not, by their legal nature, land legal relations, which, in order to achieve the greatest efficiency of legal regulation, can be regulated mainly by the methods of land law as an independent branch of law.

The conclusion of the pledge agreement itself, and subsequent compliance with its terms, and most of its requirements, are

земельного права як самостійної галузі права.

Укладення самого договору застави, і подальше дотримання його умов, та й більшість його вимог мають переважно цивілістичний характер.

Таким чином, в умовах утвердження приватної власності на землю, стрімкого розвитку ринкових земельних відносин земля стала цінним капіталом (товаром), що з часом не тільки не втрачає своєї вартості, а навпаки, може значно підвищуватися в ціні залежно від свого місця розташування, функціонального призначення, розвитку інфраструктури, благоустрою території тощо.

Ключові слова: іпотека, застава, земельна ділянка, ризики, землі сільсько-господарського призначення, орендні відносини

predominantly civil in nature.

Thus, in the conditions of the establishment of private ownership of land, the rapid development of market land relations, land has become a valuable capital (goods), which over time not only does not lose its value, but on the contrary, can significantly increase in price depending on its location, functional purpose, infrastructure development, improvement of the territory, etc.

Keywords: mortgage, pledge, land plot, risks, agricultural land, rental relations

An important role in the legal regulation of contractual land relations was played by the Law of Ukraine "On Property" of 07. 02. 1991 (now invalid), which proclaimed the right of private ownership of land. The key provisions were those that gave the right to every citizen of Ukraine to own, use and dispose of land personally or jointly with others. Landowners, including private individuals, received the right to freely carry out all actions not prohibited by law regarding their property.

The acquisition of the right of private ownership of land, the formation and development of private business of various organizational and legal forms and, as a result, the freedom of contractual behavior of business entities in the mortgage lending market created the prerequisites for the legislative consolidation of mortgage relations.

Mortgage as a legal institution developed within the framework of the land reform carried out in the early 90s, focused on the formation of a new land system. During 1995–2000. Decrees of the President of Ukraine were adopted, which provided for the possibility of transferring as collateral the right to lease non-agricultural land plots, land shares (shares), land plots owned by citizens or legal entities. Mortgage legislation in the context of land and agrarian reforms should ensure that every land owner and entrepreneur has the freedom of agricultural entrepreneurship, freedom of land turnover. With the help of mortgage lending and the use of land collateral, it is possible to create the necessary conditions for the redistribution of land in favor of highly efficient and competitive farms [1, pp. 186–189; 2, p. 42].

After the adoption of the Land Code of Ukraine, land mortgage becomes one of the effective ways to attract investments in the development of land plots and the development of agricultural and agrarian production. In accordance with Art. 133 of the Land Code of Ukraine, land plots owned by citizens and legal entities on the right of ownership can be transferred as collateral. A land plot in joint ownership may be pledged with the consent of all co-owners. The pledging of a part of the land plot is carried out after its allocation in kind (on the ground). Only banks that meet the requirements established by the laws of Ukraine may be the pledgee of the land plot. An important stage in the development of the land mortgage institution was the adoption by the Verkhovna Rada of Ukraine of the Law of Ukraine "On Mortgage" [3], which defines the concepts of mortgage, mortgagor, property guarantor, mortgagee.

The specified Law, along with the Land Code and other legislative acts, is the basis for the mortgage and the further formation of the legal environment. The next legislative step should be the adoption of the Law "On Land (Mortgage) Banks" [4, pp. 41–42].

There are some studies that have established that the definition of the concept of “mortgage” proposed by land law does not actually reflect the main content of this concept, namely that the subjects of mortgage relations use the right to use a specific object – land. Therefore, a definition is proposed according to which a mortgage is a legally prescribed encumbrance of a land plot and other objects related to it for a certain period of time, which remain in the possession and use of the mortgagor or an authorized third party, who granted the mortgagee the right to sell them in cases specified by law in order to satisfy the requirements for the land plot [5, pp. 6–7]. Having made a comparative analysis of the current state of legal regulation of mortgage relations in Ukraine and Germany, N. Hryshchuk gives interesting examples. In particular, unlike the requirements of Ukrainian legislation, which restricts the mortgagor-owner of agricultural land in choosing a mortgagee (Article 133 of the Land Code of Ukraine), in mortgage relations in Germany, lenders (creditors), in accordance with the requirements of the legislation, can be both private individuals and mortgage banks, savings banks, building savings banks, other credit institutions and official (public) institutions. According to statistics, specialized mortgage banks as financial institutions act as creditors much more often (compared to private individuals), which was due to the trend of strengthening the protection of debtors' rights and the increase in the cost of the forced sale procedure. The term "lien" (with respect to real estate) is unknown to German legislation. In scientific research, it is used as a generalized and simplified name, which in its general sense combines the essence of three well-known institutions of real estate pledge in German law, which have long been used in binding relations between citizens and received legislative consolidation with the adoption of the German Civil Code in 1896. These are mortgage, mortgage debt and rent debt. Despite the differences concerning the varying degrees of binding of the pledge right to the claim it secures, one common feature is characteristic of the mentioned institutions: in the event of non-fulfillment of the obligation, the creditor has the right to demand satisfaction of his claims at the expense of the land plot by conducting its forced sale. The land plot as a means of liability to the creditor and the object of encumbrance is considered in economic unity with other things and rights related to it. In § 14 of the Federal Law “On Mortgage Securities”, to protect the rights and legitimate interests of the creditor, a percentage of the value of the land plot is determined, within which the owner can encumber his land plot, or the “loan limit” - the first-rank security cannot exceed three-fifths of the value of the land plot. Similar provisions are also contained in the legislation on savings banks, in individual statutes of savings banks and in other regulatory legal acts that provide for lending secured by first-rank mortgage rights [5, pp. 12–14].

According to N. Hryshchuk, the definition of real estate given in Art. 181 of the Civil Code of Ukraine, in addition to ensuring its universal use, should be expanded by indicating the registration of real estate objects, in particular a land plot, in the State Register of Real Rights to Real Estate and Their Restrictions. Thus, in Germany, a land plot as the subject of a mortgage (including all components and belongings to it) is registered under a special number in the Land Register, where other encumbrances, except for a mortgage, are also registered. At the same time, it should be emphasized that those components (belongings) that, as a result of the lawful use of land by a third party within the framework of ordinary economic activity, become the property of this person are not the subject of a mortgage. In the author's opinion, such a provision should be enshrined in national legislation, given that the interests of the interested parties – the creditor and the debtor – should be taken into account not only in specific circumstances, but in a typical, general form. Contractual agreements on the limits of mortgage liability are valid only for the parties to the contract and do not apply to legal relations between all other persons. An analysis of the content of the provisions of domestic and foreign legislation allows us to conclude that both mortgage legislation and the legislation of Ukraine on land lease are obviously imperfect. According to the German Civil Code, mortgage also applies to lease claims: if a land plot was leased by its owner, the lessee acquires ownership rights to the products obtained from this land plot that are separate

from it [5, p. 16]. It can be concluded that the scope of the mortgage creditor's powers does not include the right to dispose of this product, however, he retains the right to make demands for rent for the use of the land plot. These demands can be implemented exclusively through compulsory management of property (sequestration). In our opinion, a clearer legal definition of the concept of "real estate" in contractual relations is offered by researchers of this problem [6, pp. 54–56; 7, p. 52]. A thorough description of real estate that may be the subject of a mortgage is given by V. Abramova, who believes that the processes of effective functioning of the real estate collateral mechanism today are hindered by the absence of a real land market. In addition, the problem of concluding mortgage agreements is that the subject of a mortgage is regulated by many regulatory acts, which also contain certain restrictions regarding objects that can be transferred to ensure the execution of mortgage agreements [6, pp. 56–57]. In case of non-compliance with the requirements of the legislation, such agreements may be declared invalid by the court.

Article 1 of the Law of Ukraine "On Mortgage" and Article 575 of the Civil Code of Ukraine allow real estate, as well as movable property that is equated with real estate, or property rights, to be included in the subject of mortgage.

According to Art. 5 of the Law of Ukraine "On Mortgage", the subject of a mortgage may be one or more real estate objects, and according to Art. 181 of the Civil Code of Ukraine, real estate (real estate) includes land plots, as well as objects located on the land plot and inextricably linked to it, the movement of which is impossible without their depreciation and change of their purpose. Article 191 of the Civil Code of Ukraine also recognizes a special object of civil rights as real estate – a single property complex. The same definition is given in Art. 2 of the Law of Ukraine "On State Registration of Real Rights to Real Estate and Their Restrictions" [8].

Difficulties arise with the mortgage of certain types of land plots. Thus, if an unfinished construction object is located on the land plot that is transferred for mortgage, then it is also considered the subject of the mortgage regardless of who is the owner (Part 6 of Article 6 of the Law of Ukraine "On Mortgage"). In this case, a conflict may arise with the owner of the unfinished construction object, who was not a party to the mortgage agreement.

In the event of a foreclosure on a land plot on which a building is located, which is owned by another person, the mortgagor is obliged to provide the owner of the building with the same terms of use that the mortgagor had.

The presence of restrictions in the event of alienation does not contribute to the possibility of concluding mortgage agreements, the subject of which is agricultural land.

Property rights to real estate (completed or unfinished), which are also classified by the legislator as the subject of the mortgage, require separate consideration. According to Art. 3 of the Law of Ukraine "On the Valuation of Property, Property Rights and Professional Appraisal Activities in Ukraine", property rights are recognized as any rights that differ from the right of ownership [9]. The grounds for the emergence of the property rights of the mortgagor can be various agreements.

Part 2 of Article 16 of the Law of Ukraine "On Mortgage" contains a separate case of mortgage of an unfinished construction object, under which it is transferred by transferring ownership rights to a land plot. In this case, it is necessary to remember that only land owners can be mortgagors, and mortgagees of agricultural land can only be banks. Such restrictions are provided for in Article 15 of the Law of Ukraine "On Mortgage" and Article 133 of the Land Code of Ukraine, and Article 132 of the Land Code of Ukraine contains requirements for the content of agreements on the transfer of ownership rights to land plots (location, intended purpose, legal regime, information about the absence of prohibitions). In addition, it is worth paying attention to such aspects of mortgages as are provided for by the relevant law.

It should be noted that those prohibitions and restrictions on the alienation and purposeful use of land plots established by the Land Code of Ukraine are valid under the conditions of their mortgage. The sale of mortgaged agricultural land plots when foreclosing on the subject of the mortgage is carried out at public auctions. Buyers of agricultural land plots may be persons

specified by the Land Code of Ukraine (except for land plots that are in state and municipal ownership).

The right of ownership to land established by the Constitution of Ukraine provides for the possibility of disposing of a land plot, its alienation, restriction of other rights, transfer as collateral, etc. Ensuring in this way the parity of economic and environmental interests, which underlies the principle of sustainable development, requires taking into account these features in further reforming the economy, taking into account the continuation of land reform in Ukraine, one of the directions of which is the development of lending secured by land plots.

We cannot agree with the statements of some authors [10, pp. 4–5] that legal relations arising in connection with the transfer of a land plot as a pledge are, by their legal nature, land legal relations, which, in order to achieve the greatest efficiency of legal regulation, can be regulated mainly by the methods of land law as an independent branch of law, because, in our opinion, both the conclusion of the pledge agreement itself and the subsequent observance of its terms, as well as most of its requirements, are predominantly of a civil nature.

Thus, in the conditions of the establishment of private ownership of land, the rapid development of market land relations, land has become a valuable capital (goods), which over time not only does not lose its value, but on the contrary, can significantly increase in price depending on its location, functional purpose, infrastructure development, improvement of the territory, etc.

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