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Property rights other than rights of ownership as an object of notarised transactions

Oleksiy Piddubnyi*

Doctor of Law, Professor

National University of Life and Environmental Sciences of Ukraine

03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

<https://orcid.org/0000-0003-4867-4613>

Oleg Rohovenko

PhD in Law, Associate Professor

Sumy National Agrarian University

40000, 160 Herasym Kondratiev Str., Sumy, Ukraine

<https://orcid.org/0000-0003-2887-9339>

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Abstract

The relevance of the subject is due to the frequency of application of property rights in practice, which led to the emergence of numerous situations when subjects applied to the court to protect their rights. The purpose of the study is to analyse the Ukrainian legislation on property rights other than property rights and to examine them as an object of notarisation. For the search, processing, and presentation of information, special legal (comparative-legal, formal-legal, and the method of interpretation) and general scientific (formal-logical, analysis, synthesis, concretisation and abstraction, induction and deduction) methods are used. Considering the best practices of judicial practice, the concept of "waiting right" is fixed, which is directly related to objects of construction in progress. The shortcomings contained in the current Civil Code of Ukraine are identified. Attention is drawn to the fact that the planned

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*Corresponding author

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re-modification of the code will correct many shortcomings existing in the private law sector of legal regulation. The correlation between the concepts of rights of ownership and property rights is outlined, and the absence of regulation of the concept of “property rights” in the Civil Code of Ukraine is stated. The study highlights the state of affairs regarding the notarisation of property rights other than rights of ownership. Changes caused by the entry into force of the Law of Ukraine “On Guaranteeing Rights of Ownership to Real Estate Objects That will be Built in the Future” were reported, and its importance for the regulatory plane, in general, are assessed. The problem of definitions of “property rights” and “rights of ownership” is examined. The scientific achievements of outstanding legal researchers are used, whose work is related to the correction of gaps contained in civil legislation, and the problems of insufficient definition of essential terms in regulatory legal acts regulating issues related to the subject under study. The specific features of using property and personal non-property rights in the field of intellectual property are established. The results of the study can be used for further development of doctrinal approaches to improving the institutions of property and rights of ownership

Keywords: waiting right; personal non-property rights; purchase and sale agreement; notarial action; object under construction; intellectual property

Introduction

Property rights are defined as any rights that are related to property and that will be different from ownership. This will also include rights that are components of property rights, and other specific rights, in particular, the right of claim (Law of Ukraine No. 2658-III..., 2001).

The Civil Code of Ukraine (hereinafter – CCU) (2003) very briefly defines the concept of property rights, although it is very often used in practice, which is growing exponentially every year (Stoliarchuk, 2020; Morozov, 2022). In particular, this applies to their assignment to objects under construction, because such investment for many people serves as an affordable way to purchase their housing, which in some cases will cost much less than the finished property. Accordingly, in the conditions of the existence of a future apartment “on paper”, a priori it is impossible to register ownership rights, and therefore, the investor will only have the right to demand the completion of construction, commissioning of the house and transfer to the hands of a specific apartment by

the developer through the act of acceptance and transfer. Since there were virtually no guarantees for the protection of the investor’s rights, the notarisation of the purchase and sale agreement, the subject of which is property rights to an object under construction, was considered as an additional tool for protecting rights.

The rapid growth in the popularity of buying real estate that does not yet have a physical embodiment has given rise to many disputes between the parties, and situations when developers did not fulfil their obligations (Chukhliak, 2021). The peculiarity of judicial precedents formed during the resolution of cases directly related to the subject of this study was considered by I. Utekhin (2018). The researcher also described in detail the differences between an ordinary contract of sale and a contract of sale of property rights. The researcher drew special attention to the use of such contracts in relations that arise in the process of buying housing, where there is no conventional purchase and sale and

there is a quasi-purchase and sale. In addition, a study on features related to the implementation of the property right to receive property in ownership was conducted by L. Belkin *et al.* (2020). The authors' team has clearly established the presence of specific property rights aimed at obtaining ownership of the relevant property and emphasises their direct need not only in civil circulation but also in the legislative context. The authors drew attention to the need for a proper settlement of these relations. Theoretical aspects of fixing the concept of rights of ownership were examined by H. Kharchenko (2017), having conducted a comprehensive study on this issue, considering a substantial number of doctrinal findings, legislative norms, and judicial precedents.

D. Spiesivtsev (2021) reviewed the main draft laws that relate to objects under construction. The researcher noted that if the state fails to fully provide the constitutional guarantee of each citizen for housing, it is necessary to create conditions and a high-quality regulatory framework for the possibility of citizens acquiring property by investing in construction, without any risks that encourage the loss of such investments. M. Lutsiv (2017) noted the importance of the buyer's awareness of all aspects of legal forms of raising funds for unfinished construction projects that exist because this will help the latter protect their rights in the future.

Foreign researchers have also conducted studies on this subject, for example, N. Samuel and S.U. Firdaus (2019) described the relationship between a buyer of an object under construction and a developer in Indonesia. In the conclusions, the authors established that there is no protection of the rights of consumers of unfinished apartments, since, as a rule, developers refuse to be held responsible for claims issued by the buyer. The Law of Ukraine "On Guaranteeing

Property Rights to Real Estate Objects That will be Built in the Future" (2022) was put into effect to determine the specific features of the sale of construction-in-progress objects and future real estate objects and guarantee the property rights to such objects in civil circulation. However, the institutions of property and rights of ownership still need to be improved, and therefore scientific findings on the settlement of legal conflicts over so-called problematic property objects do not lose their relevance.

The purpose of the study is to examine the fundamental issues, legal definitions, and problems related to property rights other than property rights, establish the possibility of their certification by a notary, and determine the existing gaps contained in the current CCU (2003) and the possibility of their elimination with the introduction of a new version of the code.

While searching and processing information for the study, the authors used the following research methods: formal-logical, methods of analysis, synthesis, concretisation and abstraction, induction and deduction. Comparative legal, formal legal, and method of interpretation of legal norms were also used. The study uses sources of Ukrainian legal researchers, in particular, papers by such researchers as I. Utekhin (2018), H. Kharchenko (2019), V. Hrabyk and I. Koval (2018), etc.

The studies of these researchers contain opinions on gaps in the Civil Code, expressed in the insufficiency of interpretation of property and property rights as separate legal categories, and also present the main gaps in the protection of property rights other than property rights before the adoption of the law "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future" (2022). General research methods are used in the study of the regulatory component concerning the specific features of the

implementation of property rights that differ from ownership rights and their protection. In particular, using the method of induction and deduction, vulnerabilities in Ukrainian legislation were identified, which lead to the emergence of ambiguous legal positions on the subject of research.

Normative regulation of the concept of rights of ownership and property rights

CCU (2003) is a key normative legal act on which the modern Ukrainian private law doctrine is based. 2003 was marked by the reform of Ukrainian civil studies, as the adoption of the code served as another proof of distancing from the Soviet standards of perception of property rights and stated its role as an integral part not only for the state but also for each individual. The gradation of legislation indicates the development of the country and the desire to improve its functioning, but the diversification of legal norms is a consequence, not a goal, since the development of society determines the need to create a relevant legal regulation. As of January 2023, the code adopted 20 years ago has not yet lost its force, but there is a substantial prospect at the moment because a large-scale update of the civil code is being announced, which will increase the range of public relations that will be covered by the new version and will allow filling in the gaps made by the legislator in the previous version.

For example, N. Kuznetsova (2014) notes the difficulties of implementing the 2003 CCU, as the process was identified to be complex, inconsistent, and contradictory. But, despite the criticism, it is worth noting the role of the code as a foundation for fixing the fundamental principles of regulating personal and property relations in the private law field, and as a catalyst for the development of civil doctrine and legislation on a fundamentally updated platform.

Special attention should be paid to the study by I. Spasybo-Fatieieva (2015), which identifies the specific features of the interpretation of rights of ownership by both Civil and Economic codes. As a result, the researcher finds the fact that the situation with the understanding of this concept in the Ukrainian legal plane is quite confusing and incomprehensible. Special attention is also drawn to the need to reform public property relations and bring them into consistency with private property relations.

In addition, from some older studies, it can be understood that the problem is not new, so even now the comments of previous researchers on the issue remain relevant. P.M. Anglin (1994) started searching for a model that will be used to implement an agreement on the sale of real estate. It also establishes the prevalence of the use of property rights, which requires the legal implementation of the principles of their circulation (Shymon, 2013). S. Shimon reduced his thoughts to the fact that the property right is a kind of guarantee that allows getting a material benefit in reality.

One of the incomplete parts of the CCU (2003) is the category "property rights". To date, the code does not provide a theoretical explanation of property rights. Article 179 of the CCU defines a property as an object belonging to the material world, in respect of which, civil legal personality can be established, so it is appropriate to note that such rights will be recognised as property rights. The corresponding approach is due to the awareness of property as the main feature of rights of ownership, which distinguishes them from other civil rights. The presence of a person's property rights allows them to perform any actions in relation to property, so, logically, they are endowed with an absolute character. This imposes an inert obligation on third parties, which makes it impossible to create obstacles for the authorised person

to exercise their right. However, property rights can also have an exclusive character – the ability of a person to own, use, and dispose of property within the limits established by law.

The absence of property law as a category in the Ukrainian regulatory framework is compensated by the use of doctrinal findings, judicial proceedings, and other legal acts, but views on the insufficient interpretation of the concept cause mixed reviews among researchers. For example, H. Kharchenko (2019) notes that the right of ownership has moved property rights into the background since the substitution of a generic phenomenon with a specific one is monitored, this is emphasised by the absence of provisions in the book of the third civil code that in general were able to define property rights as a definition. The right of ownership, being a more complete variety in content, should not replace subjective property law as a generic category. The concept of “property right”, on the subjective side, must exist independently of any mode of assignment, otherwise, it will lose its generic meaning and will not be able to act as a qualifying function for defining subjective civil law as real. H. Kharchenko focuses on the correlation of categories beyond theory and practice since the methodological importance of the concept of subjective property law makes it impossible to identify in practice various property-legal regimes expressed in the form of certain types of property rights. Accordingly, in the right of ownership, the potential of subjective property rights will be fully implemented, however, not comprehensively.

V. Hrabyk and I. Koval (2018), having analysed the norms of law and the views of researchers on the normative consolidation of rights of ownership, it was concluded that Chapter 13 of the CCU should be supplemented with the following provisions:

“1. Property right is the right of a person to a property that includes the right of ownership and property rights that satisfy the interests of the authorised person through direct influence on the property.

2. The exercise of a real right by a person must comply with legislative norms, but it must also be implemented at their own will, which will not depend on the intentions of other persons. The only exceptions may be the cases specified in the law”.

M. Hudyma (2020), as a result of the investigation of the implementation of property rights in obligations, proved that the nature of rights of ownership does not correspond to the relations in which it is implemented. The author’s study also indicates the specificity of property rights, which is intertwined with legal ties at several levels. Given the complexity and importance of rights of ownership as an object of legal regulation, the conciseness of legislative regulation of the concept is considered unacceptable.

The division of property rights into property rights and other property rights (in particular, the right to other people’s property) requires considerable attention, because another terminological gap in the current CCU (2003) is the correct definition of “property rights”, or rather, its absence, even despite the repeated use of the term in the provisions of the code. The only amendment concerning this issue is the addition of part two of the Article 190 of the CCU, according to Law of Ukraine “On Amendments to Some Legislative Acts of Ukraine” (2005), which is called “property”, where its first part defines property as a special object, referring to it a separate specific property or a set of properties. This will also include property rights and obligations. Accordingly, part two of the Article describes property rights as a non-consumer thing and recognises such rights as property rights (Civil Code of Ukraine, 2003).

Such an addition does not fully describe the meaning of property rights since it is characterised by an insufficient covering of the concept.

However, Article 3 of the Law of Ukraine “On Valuation of Property, Property Rights and Professional Valuation Activity in Ukraine” (2001) regulates the definition of property rights, to which the mentioned standard refers such rights that are related to property and will also be different from the right of ownership. Accordingly, they include rights that act as components of property rights, and other rights that have certain specific features and requirements.

V. Kossak (2004) gives property rights a commodity character since their main content is precisely the transfer of rights of material nature.

Property rights are also inherent in intellectual property rights. This position was aptly expressed by O. Rozgon (2016), who drew attention to the substantial difference in the established property rights in relation to objects of the material world when the objects related to property rights will be exclusively objects of the non-material world, which were already known in Roman law as disembodied. Accordingly, with respect to intellectual property rights, there is a possibility of replication, while the distribution of property rights will be directed to a specific property. This is explained by the nature of the origin of intellectual property rights: the results of the intellectual and creative activity of a person are expressed in sounds, ideas, images, symbols, etc., and such things have the ability to reproduce in any quantity when the property in the material world exists in a single copy. However, it is worth remembering that the effect of intellectual property rights is directed exclusively to intangible property, however, this will not apply to physical media where the author’s idea is embodied.

V. Mykytyn (2016) considers the property rights of intellectual property from the standpoint of their subject since the researcher refers here to the corresponding subjective rights that cause such a subject to encourage property interest.

Article 424 of the CCU (2003) regulates the following non-property rights related to intellectual property rights:

- 1) ensure the right to use an object related to intellectual property rights;
- 2) allow the use of an object related to intellectual property rights as an exclusive right;
- 3) provide an opportunity to use methods of preventing the illegal use of an object related to intellectual property rights that do not contradict the law (also understood as an exclusive right);
- 4) other intellectual property rights defined by the current legislation.

Thus, Ukraine, in its efforts to develop a basic standard with a private legal direction, implemented the CCU, which set a starting point for layering various laws and other acts to expand the field of regulation of public relations. Despite attempts to settle fundamental issues, the legislator was unable to streamline a number of important factors, in particular, it concerns the concept of property and rights of ownership. It is necessary to conduct a full explanation of these definitions in the new implementation of the CCU, which is relevant: special attention should be paid to their clear definition in the restored version, since, as already noted, doctrinal and judicial findings have brought out a number of ideas. A weightier argument for confirming these views will be the full existence of regular application of property and ownership rights in public relations, hence it is clear that any field, especially the basic one, requires a proper regulatory foundation.

Features of implementation of property rights in relation to objects under construction

Despite the incomprehensible interpretation of property rights in the normative and doctrinal plane for an ordinary citizen, their demand in the practical aspect as a separate legal institution is quite high, for example, they are widely used when investing in residential development. The principle is implemented by depositing funds by the investor in a non-existent object, which in the future will find its physical embodiment. Understanding the problems faced by a potential investor, the courts have long appealed to the term “waiting right”.

Regulating the status of property rights in judicial practice, references to Article 3 of the Law of Ukraine “On Valuation of Property, Property Rights and Professional Valuation Activity in Ukraine” (2001) are actively used – property rights that have the ability to evaluate will be recognised as rights that are related to property, and those that are different from ownership rights, this also includes rights understood as components of property rights, and some other specific rights and the right of claim (Belkin *et al.*, 2020).

There is such a classification of property rights that differ from property rights: rights to real estate objects that are in the process of construction (this will also include the purchase and sale and pledge of property rights); property rights to finished real estate that has been purchased, but has not yet been acquired (CCU, 2003).

As for the property rights to finished real estate that has been purchased, but has not yet been acquired in ownership, the conclusion of a preliminary contract for the purchase and sale of real estate and its possibility to act as the subject of the pledge will take place.

According to Article 4 of the Law of Ukraine “On Pledge” (1992) the pledge includes property and property rights. The article also stipulates that the subject of the pledge can be the property that will become the property of the pledgor when the pledge agreement is concluded.

Part 1 of Article 635 of the CCU (2003) defines a preliminary agreement in which the parties are obliged to conclude the main agreement in the future within the appropriate time limit, in accordance with the conditions regulated by the preliminary agreement. The peculiarity that distinguishes the preliminary contract from others is fixed in part 3 of Article 635. It consists in the termination of the obligation established by the preliminary agreement, provided that the main agreement is not concluded within the time allotted for this, or if neither party receives an offer to conclude it.

Thus, property rights to a real estate object in respect of which a preliminary purchase and sale agreement is concluded can be the subject of a pledge, and therefore, in practice, there will be situations when an unscrupulous buyer transfers as a pledge what does not belong to them, and this entails problems for the real owner, provided that the preliminary agreement is terminated, and the property is already pledged.

Investment activity in construction is one of the most common areas of application of property law in practice. Contributing finance to a project is aimed at obtaining a real estate object or, otherwise, income generated from managing such funds. At the time of investing in an object under construction, there will be no question of registering ownership rights, but first, there are property rights.

In the paper by Ye. Khodyko (2011) it is established that an object under construction will be a priori, independent, separate property. The

opinion boils down to the fact that ownership of construction materials, at the expense of which real estate is built, does not extend ownership rights directly to real estate. Therefore, when an object acquires its physical embodiment, the line between the means of construction and the result of their use is erased, since the consumable material simply ceases to exist. In support of this thesis, V. Kyryliuk (2014) interprets the possibility of staying based on the right of ownership only for those construction materials that were not used in the construction process.

According to the general rule defined in Article 331 of the CCU (2003), the moment of disclosure of ownership rights in respect of immovable property is considered to be the very moment when state registration is applied, which takes place after the final completion of the construction procedure and the suitability of the object for operation. Until then, only the obligation to construct and transfer the object in a completed state arises between the developer and the investor.

Accordingly, it is impossible to implement a classic contract for the purchase and sale of real estate in such a situation, but part 4 of Article 12 of the CCU (2003) provides for the possibility of transferring property rights to another person, except in cases established by current legislation. Consequently, the law gives property rights turnover, which allows them to act as the subject of a contract.

The current CCU does not define the concept of a contract for the purchase and sale of property rights, although this type is popular in practical application. The emphasis is placed on property rights as the subject of a pre-agreement.

In her dissertation, V. Anatyichuk (2020) presented the development of a transcript of the contract of purchase and sale of property rights to the construction object. Accordingly, there are two parties, one of which is the buyer – a person

who provides or has a direct obligation to provide money to the other party that is the seller. At this time, the seller undertakes to transfer the property to the buyer in the future (when the object is put into operation) based on ownership rights.

It is worth considering the Legal Opinion of the Supreme Court of Ukraine in case No. 6-290цс16 (2016), the essence of which lies in the impossibility of acquiring property rights to housing. Based on the materials of the case, the plaintiff made his own monetary commitments in accordance with the property rights purchase and sale agreement, which served as the cause for the establishment of prerequisites necessary to create grounds for acquiring the right to demand the transfer of property rights regarding the object, the construction of which is incomplete or for acquiring property rights to such an object. Consequently, the plaintiff did not acquire the object into ownership, and thus, the property rights purchase and sale agreement only granted them the right to acquire property ownership rights (CCU, 2003).

Analysing the explanations of the Supreme Court of Ukraine regarding the mentioned case, I. Utekhin (2018) draws a parallel between the area of the contract of sale, the subject of which is property rights and the contract that concerns the purchase and sale of real estate. According to the case file, the housing did not exist at the time of its consideration, the object was not put into operation and the act of acceptance and transfer was not issued. According to I. Utekhin, the completion of the construction and its acceptance into operation substantially revived the plaintiff's position, since the latter would have the full right to demand the fulfilment of the obligation to transfer the apartment based on ownership.

Accordingly, in the actual situation that has arisen, the plaintiff is endowed with the right to demand from the developer the fulfilment of the

contract conditions, which involve the completion of construction, putting the property into operation, and subsequently, the transfer of the apartment. In other words, the absence of ownership of the object that was built and put into operation of the building excludes the emergence of property rights in relation to the real estate object. Therefore, this situation serves as a favourable ground for dishonest counterparties, which manifests in the subsequent resale, when the buyer will not have the ability to verify this (Utekhin, 2018).

The current legislation did not provide for an effective mechanism for protecting the investor's rights, since the Law of Ukraine "On State Registration of Rights to Immovable Property and Their Encumbrances" (2004) represented the possibility of registering rights, but the list was characterised by exhaustion, and as for property rights, they were a priori absent there. Since the fact of entering into the purchase and sale agreement was essentially only contained in the developer's documentation, a one-time sale could only be guaranteed by the developer.

One of the ways to prevent violation of the rights of the buyer of an object under construction was given by N. Zahorniak (2013). It is proposed to harmonise the interests of both the investor and the developer, where the person who invested the funds will receive the financed property since the seller will have a direct interest in such a result.

It is possible to notarise the purchase and sale agreement. The provisions of CCU (2003) regulate the concept of a notarial transaction, defining it as the implementation by a notary or an authorised person who, according to the current legislation, is entitled to perform this action by establishing a certifying inscription on the document where the text of the transaction is indicated. Therewith, transactions made in writing are subject to notarisation, if the law contains an

indication to perform a notarial act or if the parties have agreed to do so. Despite the absence in the law of Ukraine "On State Registration of Rights to Immovable Property and Their Encumbrances" (2004) the norm that required notarising the contract of purchase and sale of property rights to an object under construction, at the request of the investor and developer, is applied to a notary.

It is generally known that mandatory state registration of property rights, and other rights of ownership related to immovable things, and encumbrances of such rights, and their occurrence, transfer and termination are established. Registration of immovable property is conducted by entering information in the Register of Rights of Ownership to the Immovable Property based on the Law of Ukraine "On State Registration of Rights to Immovable Property and Their Encumbrances" (2004). The classification of property rights under CCU (2003) as material rights, and the possibility of their notarisation, is entirely feasible. However, considering the absence of ownership rights to an object whose construction is still ongoing, the data will not be recorded in the Register of Material Rights to Immovable Property. In this case, the transaction is notarised, which does not guarantee the absence of any risks.

However, on 10.10.2022, the Law "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future" (2022) has come into effect, aiming to mediate the intricacies of civil turnover of unfinished properties and real estate objects whose construction will occur in the future. This law is directed towards implementing warranty principles regarding material rights to such objects. Under the new regulations, a developer will not be able to sell apartments within an unfinished construction project unless each of them is registered with the Ministry of Justice as a separate property rights object. This registration

can only be done when proper permit documentation is available. In addition, the adoption of the law was marked by the impossibility of re-selling the apartment. Accordingly, the Law of Ukraine "On State Registration of Rights to Immovable Property and Their Encumbrances" (2004) was amended on the implementation of registration.

According to the provisions of Article 55 of the law of Ukraine "On Notary" (1993), mortgage agreements, the mortgage under which are property rights to real estate, the right to perform construction works in respect of which was obtained before the entry into force of the Law "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future" (2022), the construction of which is not completed, are certified subject to the submission of documents confirming property rights to real estate.

The Law "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future" (2022) also amends CCU (2003), specifically the first part of Article 575 is presented in the following version: "Under mortgage is understood immovable property, which is placed under a pledge that will be in possession of the pledgor or is a possible option for being held by a third party, as well as a pledge for an unfinished construction object or a real estate object whose construction is planned for the future." Such an object of unfinished construction can be transferred to a mortgage only in cases defined by law. In addition, part 1 of Article 577 now states the following: in the case when the subject of a pledge is real estate, an object whose construction is still ongoing, a real estate object that is planned to be built in the future, and in cases regulated by current legislative norms, notarisation will take place for the pledge agreement, except for cases prescribed in the legislation.

Thus, given the number of negative consequences faced by investors in objects of unfinished

construction, it is advisable to supplement the new version of the CCU with the concept of a contract for the purchase and sale of property rights, which will greatly facilitate the protection of invested funds, since the right of citizens to housing is constitutionally guaranteed. Realising that not everyone has the opportunity to purchase a real estate object that has a physical and legal implementation, it will be the duty of the state to ensure the possibility of acquiring it in the future.

Conclusions

Despite the fundamental significance of the revised Civil Code of Ukraine (CCU), certain sectors within the private law regulatory framework remain underdeveloped to this day. It is worth paying special attention to the insufficient clarification of details concerning "property right" and "ownership right" as legal categories, so in the new version of the Civil Code it is necessary to eliminate the gaps that exist at the present stage, since, given the special demand for these concepts in the practical plane, it is unacceptable to provide an unclear interpretation in the current code, which serves as a key standard for the private law sector of regulation.

One of the promising areas of recodification of the CCU is its supplementation by the definition of "contract of sale of property rights" as a type of contract of sale. In the doctrinal sphere, there are numerous interpretations and practical activities are filled with cases involving the application of such agreements. This necessitates the need for legal formalisation, as the development of social relations requires their proper regulation. Such an addition is impossible without a full explanation of the concept of "property rights" since they give rise to contracts that are associated with them.

In addition, the entry into force of the new law somewhat actualises the issue of guarantees

for potential real estate investors, but the gap in the basic terminological interpretation of property rights still exists, which is a problem, given the active application of the institution of property rights in practical terms.

In the course of the study, the possibility of notarising the contract of purchase and sale of property rights to an object under construction was established, but it was determined that this will not lead to guarantees to protect the investor's rights in case of non-fulfilment of obligations by the developer, but will only serve as confirmation of the emergence of legal relations between them.

The originality of the study lies in the possibilities of more optimal protection of the interests

of an investor who invests in real estate at the construction stage or enters into derivative transactions with an asset that do not directly affect ownership rights.

The prospects for research are seen in the development of effective legal regulation of operations involving material rights distinct from ownership rights, such as property rights to immovable property.

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Conflict of Interest

None.

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Майнові речові права, відмінні від права власності, як об'єкт правочинів з нотаріальним посвідченням

Олексій Юрійович Піддубний

Доктор юридичних наук, професор

Національний університет біоресурсів і природокористування України

03041, вул. Героїв Оборони, 15, м. Київ, Україна

<https://orcid.org/0000-0003-4867-4613>

Олег Володимирович Роговенко

Кандидат юридичних наук, доцент

Сумський національний аграрний університет

40000, вул. Герасима Кондратьєва, 160, м. Суми, Україна

<https://orcid.org/0000-0003-2887-9339>

Анотація

Актуальність теми зумовлено частотою застосування майнових прав на практиці, що спричинило виникнення численних ситуацій, коли з метою захисту власних прав суб'єкти зверталися до суду. Мета статті – здійснити аналіз українського законодавства щодо майнових речових прав, відмінних від права власності, а також розглянути їх як об'єкт нотаріального посвідчення. Для пошуку, обробки та викладення інформації застосовано спеціально-юридичні (порівняльно-правовий, формально-юридичний, а також метод тлумачення) та загальнонаукові (формально-логічний, аналізу, синтезу, конкретизації та абстрагування, а також індукції та дедукції) методи. Враховуючи напрацювання судової практики, зафіксовано поняття «право очікування», прямо пов'язане з об'єктами незавершеного будівництва. Визначено недопрацювання, які містяться в чинному Цивільному кодексі України. Звернено

увагу на те, що запланована рекодифікація кодексу дасть змогу виправити безліч недоліків, наявних у приватноправовому секторі правового регулювання. Окреслено співвідношення понять речових прав та права власності, констатовано відсутність регламентації поняття «речові права» в Цивільному кодексі України. Висвітлено стан речей щодо нотаріального посвідчення майнових речових прав, відмінних від права власності. Повідомлено про зміни, зумовлені набранням чинності Закону України «Про гарантування речових прав на об'єкти нерухомого майна, які будуть споруджені в майбутньому», оцінено його значення для нормативної площини загалом. Досліджено проблематику дефініцій «майнові права» та «речові права». Використано наукові надбання видатних вчених-правовиків, роботи яких пов'язані з виправленням прогалин, що містяться в цивільному законодавстві, а також проблематику недостатнього дефініціювання істотних термінів у нормативно-правових актах, які регламентують питання, пов'язані з досліджуваною темою. Встановлено особливості використання майнових та особистих немайнових прав у галузі інтелектуальної власності. Результати дослідження можуть бути використані для подальшої розробки доктринальних підходів до вдосконалення інститутів майнових та речових прав

Ключові слова: право очікування; особисті немайнові права; договір купівлі-продажу; нотаріальна дія; об'єкт незавершеного будівництва; інтелектуальна власність
