



Project “LAND REFORM BAROMETER” Information and Advocacy Campaign

Land Reform Barometer

How to change type of land use within
categories of land?
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A significant number of readers who receive informational materials from the Barometer of Land Reform: Informational and Advocacy Campaign Project are interested in issues on how to change land use types among categories of land. For example, a person who owns a plot of farmland used for truck farming and wishes to use this plot of land for individual gardening instead; or a person who owns a plot of land for a residential or public building, particularly for land designated for the building and servicing of a house, wishes instead to use this plot of land for garage construction. The readers were particularly interested in legal regulation of the above issues and whether they infringe the law by changing the use of a plot of land without permission.

All plots of land on the territory of Ukraine have their designation. This is prescribed by the Article 19 of the Land Code of Ukraine. Usage of a plot of land according to its designation is one of the land law principles. According to the Article 91 of the Land Code of Ukraine owners of land plots are obliged to ensure its usage in line with their designation. At the same time, the Article 96 of the Code lays down the same obligation for land users.

However, even within a single category of land (designation of land), for instance, for a plot of land for residential or public building, there exist certain types of land usage. The aforementioned types are stipulated by the Classifier of lands designation types (approved by the Decree of State Committee of Ukraine of Land Resources, July 23, 2010 #548). According to the Decree farmland is divided in separate types of usage, such as: for agricultural commodity production; for farming; for individual gardening; for haying and grazing; for services in farming, etc.

In turn, the land for residential or public buildings are divided into land for apartment blocks buildings, garage construction, for building and service of a house, NGO's activities, and activities in the fields of culture and sport, recreation and entertainment, etc.

Part 5 of the Article 20 of the Land Code of Ukraine establishes types of land use within certain categories of land (designation) **may be determined by its owner or land user on their own** within the requirements established by the law as for the use of particular category of land, taking into account urban planning and land management documentation. Considering the provision of the Article, we may arrive at the conclusion that the usage of a farmland plot with a designation of truck farming, for example, for gardening purposes is legal, since it is foreseen by the law. Yet, this conclusion would be false,

since the same Article of the Land Code of Ukraine establishes that the right of a landowner or land user to choose the type of land use regards all categories of the lands, **except for farmland and land designated for national defense**.

In other words, unauthorized changes in the use of land within a certain category of land, in our case farmland, are illegal. Therefore, gardening on farmland designated for truck farming would violate the law, unless the type of usage of this plot of land is *individual gardening*.

However, with regards to a land plot designated for residential or public buildings, when the type of usage is building and servicing of residential homes and when a person wishes to change this type, for instance, to individual garage construction, then in this case the actions of the person would be deemed as lawful under the condition that this person acts within the requirements established by the law concerning usage of this category of the land, taking into account urban planning and land management documentation.

It is worth paying attention to the fact that if a person does not know the type of their land plot use within a certain category of land, they can discover the type from their State Act for the land plot. The type of land usage is written in a separate column in the documents concerned with this Act.

Regardless of the analysis provided here, the Ukrainian land legislation has a problem in the context of unauthorized change of farmland usage. Even if a person changes farmland usage on their own (unauthorized), the enacted legislation does not foresee any liability for such action.

All things considered, we can conclude from the analysis of the legislation that an unauthorized change of land usage by a landowner, within a certain category (designation) of land, is permitted in Ukraine. However, this rule does not apply to farmland and land designated for national defense, where unauthorized change of land usage is banned. The effectiveness of this ban is limited by the fact that there are no financial repercussions for breaking the law.