

# **“The Contract for Deed Prevalence Project”**

**A Final Report to the Texas Department of Housing and Community Affairs (TDHCA)**

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***Disclaimer:*** *The research, data collection and analysis, and preparation of this Final Report was undertaken at the University of Texas at Austin under contract from the TDHCA. Responsibility for the findings and views expressed in the Report lies solely with the abovementioned authors, and should not be construed as representing those of either the Agency or its Officers.*

# Executive Summary

## OVERVIEW OF PROJECT

This Report by the University of Texas at Austin examines titling and land acquisition practices in Texas colonias and similar communities on the Texas-Mexico border, as well as interior counties around Austin. The Report is the result of a Contract for Deed Prevalence Research Project (hereafter the Project) commissioned by the Texas Department of Housing and Community Affairs, in response to a 2011 recommendation from the Texas Sunset Advisory Commission. The core requirement and focus of the Project was to estimate the current number of recorded and unrecorded Contracts for Deed (CFDs) in Texas colonias in six counties: Cameron, El Paso, Hidalgo, Maverick, Starr and Webb (we also added Val Verde for a portion of the study).

In addition to looking at hard counts of CFDs, we set out to understand more deeply: (1) who is still using CFD and why; (2) the full range of homeownership acquisition methods in colonias and the extent to which these areas are related to increased informality and a concomitant “clouding” of title; (3) what is happening to ownership interests in older colonias as the aging owners die and pass on their housing assets; and (4) what barriers and issues are homeowners facing in obtaining secure, clean title to their homesteads. Since we know from prior research that conditions found in colonias exist throughout Texas, the Report also set out to examine similar informal subdivisions in Central Texas, near our base at U.T.-Austin, with varying degrees of focus on Guadalupe, Hays, Travis, and Bastrop counties.

Summarily defined, a colonia is a state designation of a neighborhood within 150 miles of the Mexico border comprised primarily of low-income households and defined by poor physical and economic conditions, including limited infrastructure and substandard housing. In the Report, we refer to similar communities that don't meet the formal state definition of a colonia as informal homestead subdivisions, or IFHs. These include subdivisions in interior counties as well as the new generation of subdivisions being developed along the border since 1995 under the State's model subdivision rules. But for varying degrees of more developed infrastructure and housing conditions, these subdivisions resemble colonias in form and function.

The Project was undertaken by a research team comprised of faculty and graduate students at the University of Texas at Austin. It was co-directed by Dr. Peter M. Ward at The Lyndon B. Johnson (LBJ) School of Public Affairs, and at the UT School of Law by Heather K. Way, Lecturer and Director of the Community Development Clinic and Lucille Wood, Lecturer and Research Fellow in the William Wayne Justice Center for Public Interest Law. Responsibility for the research findings, views, and recommendations contained in this report are those of the aforementioned authors, and should not be construed as those of the TDHCA.

## RESEARCH STRATEGY

Our study used a “mixed methods” approach that included interviews with key informants, focus groups, archival analysis, household surveys, aerial imaging, etc. The Project was designed in three stages, or phases. Phase One was undertaken primarily in the first four months and focused upon getting a hard count of the **recorded CFDs** (RCFDs) from 1989 through 2010 in the targeted counties and the data sources were county deed and CAD records, and assistance

from title companies in a few counties. We also assessed the relative and current importance of RCFDs against the backdrop of all recorded land sales transactions in each county.

Phase Two of the Project was focused on estimating the numbers of **unrecorded CFDs** (UCFDs). Since the data for UCFDs are unavailable in government records, this phase involved sampling and conducting household surveys. In the first four months of 2012, we conducted nearly 1,300 surveys of households in 65 colonias and IFHSs in 8 counties. In order for us to extrapolate settlement findings to the wider county level in the 6 border counties designated by TDHCA (Cameron, El Paso, Hidalgo, Maverick, Starr, Webb), our selection of all of the colonias was random. The surveys also included a number of purposively-selected IFHSs on the border developed post-1995 under the model subdivision rules, given our interest in understanding current developer practices and examining neighborhoods where developers are currently most active (the State does not include these subdivisions in the formal definition of a colonia given their access to water and wastewater infrastructure). The findings from these newer subdivisions were **not** included in our extrapolations to the county level. Finally, the communities we surveyed included purposively-selected IFHSs in Hays and Guadalupe counties in Central Texas. We also did not make any extrapolations to the county level for these interior counties. Households were selected randomly and gathered detailed information about the nature and costs of lot/home purchase, the papers that they received, etc. This data formed the basis for the second part of Phase Two which consisted of painstaking tracking of individual title histories in the County Appraisal District and county clerk records, with assistance from title companies in some counties, in order to arrive at estimates of UCFDs.

Phase Three of the Project sought to offer more qualitative insights related to titling practices and informality in land transactions and to research major trends and issues arising from current land acquisition processes. We conducted a systematic analysis of the survey database to examine issues such as inheritance, renting, the evolution of developer practices over time, consumer-to-consumer sales, cross comparisons of newer and older colonias, and lot abandonment. We also conducted follow-up phone interviews of purposively-selected households, along with a follow-up mail survey of absentee owners, and a lot “flipping” analysis of CAD records for newer subdivisions in El Paso and in Hidalgo, to better understand the extent to which developers are rapidly repossessing lots.

## **OVERVIEW OF CONTRACTS FOR DEED AND LAND TITLING IN TEXAS**

There are three primary mechanisms for titling and financing the purchase of a homestead<sup>1</sup> in Texas: (1) a deed with lender financing via a deed of trust; (2) a deed with seller financing via a deed of trust; and (3) a contract for deed. Of the owners we surveyed who purchased their homes, 70% purchased the land by itself, while the other 30% purchased land with a house on it, which could have been a manufactured home, module (stick frame) structure, house built on site, or a combination of these structures.

The most common pathway to homeownership in the formal market is a deed with a deed of trust, with the buyer obtaining financing for the purchase from a lending institution. With a bank-financed loan, the process is very formal, with legal documents prepared by attorneys, title insurance, a survey, an appraisal, consumer disclosures, and a host of regulatory protections

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<sup>1</sup> In the Report, we use the term “homestead” to refer to the purchase of a lot with a home on it, as well as a purchase of just a lot where the buyer has the intention of moving a manufactured home or other residential structure onto the lot. In both instances, we use the term to refer to a property that someone intends to own and is occupying as his or her primary residence.

for consumers. When a buyer is unable to secure bank financing to purchase a home and does not have the personal means (either personally or through family) to pay cash up front for the purchase, the buyer is left with the option of obtaining seller financing for the home.

This traditional (formal) pathway to homeownership is the exception in colonias and IFHSs: Of the homebuyers we surveyed, only 11.7% purchased their homes did so with bank or credit union financing. With seller financing, instead of receiving an upfront payment for the home via the bank, the seller receives payments towards the purchase price directly from the buyer over a period of time, typically ranging from five to thirty years. Both developers and residents selling property in colonias and IFHSs are by and large utilizing seller financing.

When seller financing is utilized, the seller has two options as to how the titling and financing for the transaction will be handled. The first option is to use a deed with a deed of trust and vendor's lien. Similar to a bank-financed transaction, the buyer receives the title from the seller upfront, via the deed, as soon as the closing documents are signed and down payment is made. This type of transaction can range in levels of formality. Similar to buyers obtaining bank financing, some buyers receiving seller financing go through a very formal process with a real estate agent and a title company to scrutinize the transaction and assist with the paperwork, and a title insurance policy to safeguard against title issues. In other transactions, with much lower levels of formality, the seller handles all the paperwork, the closing happens around the kitchen table, and no outside parties are involved to review the transaction or the title for irregularities or problems.

As an alternative to using a deed of trust and deed, a seller can utilize a contract for deed. With a CFD, the seller promises to issue a deed to the buyer only after the buyer has paid the entire agreed purchase price. In other words, legal title does not transfer to the buyer until all payments owed under the contract are completed. Contracts for deed are referred to as "executory contracts" in the Texas Property Code, and have also been called "contracts for sale," "poor man's mortgages," and "land contracts." Starting in 1995, the Texas Legislature adopted a series of regulations bringing CFDs under stricter regulation, including a requirement in the Texas Property Code (§ 5.079) that CFDs be recorded, although as discussed below this required is being ignored by some sellers, especially in consumer-to-consumer transactions. Purchasers often lack information about the title and conditions of the contracting, interest rates, and the importance of recording their documents in the county clerk records or do not understand the process for recording their documents.

A key element of most CFDs is the forfeiture clause—which provides that if a buyer defaults under the contract, the seller can declare the contract terminated, regain possession, and retain the buyer's prior payments as liquidated damages. Moreover, the homebuyer also typically loses the right to recover from any improvements made to the property. During the contract term, the buyer with a CFD is typically responsible for maintenance of the property and payment of the taxes and insurance, but this depends on contract terms, which are not always delineated. Typically (but not always in the case of non-developer transactions), CFDs include interest on the sales price, with rates significantly higher than conventional financing rates: 12% to 18% interest rates are common, although we came across rates as high as 20% during our field work for the Project.

A variation of CFDs is the lease-to-own contract. In a typical lease-to-own contract (also referred to as rent-to-own and lease-option contracts), the homebuyer pays a nonrefundable option fee up front and makes monthly payments under a lease for a set term. At the end of the lease term, if the buyer has followed the terms of the lease and is able to secure financing (from

a bank or the seller), the buyer is eligible to purchase the home and obtain title from the seller. Otherwise, the buyer forfeits all payments made under the contract. Lease-to-own contracts are subject to many of the same state regulations as CFDs. For purposes of this Report, references to CFDs also include lease-to-own contracts.

Our fieldwork confirmed that CFDs range broadly in degrees of formality. The most formal documents are those used in developer-to-consumer transactions, and involve a lengthy and detailed typed contract. At the other end of the spectrum, the most informal of these contracts are merely oral agreements or understandings with receipts as the only written evidence of the transaction. In between the oral agreement and a formal CFD lies the informal CFD. Informal CFDs, which are seen most often in consumer-to-consumer transactions (versus developer sales), typically involve a document prepared from scratch by either the buyer or seller with varying degrees of information about the terms of the transaction. These agreements are usually very cursory and fail to include the statutory-mandated consumer disclosures, notices, and other provisions required by the Texas Property Code, as well as basic information about the parties' rights and responsibilities under agreement.

## **OVERVIEW OF THE RESIDENTS WE SURVEYED**

Below is a summary overview of the 1,287 residents we surveyed in 8 counties from January to April 2012:

- ❖ 96% are Hispanic, and 62% are female.
- ❖ The heads of household we randomly surveyed included: 972 (76%) owners, 190 (15%) renters, 29 respondents who live rent-free from an absentee owner, and 20 who live rent-free from an owner who resides on the property.<sup>2</sup>
- ❖ A majority of the residents are living in deep poverty: 57% of the owners and 63% of the renters we surveyed make less than \$1,600 a month.
- ❖ The average household size of our survey respondents—4.16—is higher than the U.S. and Texas average of 2.59 and 2.78 respectively, with larger household sizes found in the newer subdivisions we surveyed.
- ❖ The households are very stable in terms of very low divorce rates: 75% of the heads of household we surveyed are formally married or in a common law union—only 7% have been divorced, and only 6% are single.
- ❖ 523 (54%) of the owners we surveyed had purchased from a developer (or land company), 326 (34%) had purchased from another consumer, and 24 had inherited their homestead from a deceased former owner. An additional 33 had received their property via a gift from living family members.
- ❖ Informal pathways to homeownership in colonias and IFHSs still provide a stable source of housing for many residents. Three-fourths of residents who purchased their have lived on their lots for at least 10 years.
- ❖ Roughly half of owners and renters live in colonias and informal homestead subdivisions that were developed prior to 1989.

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<sup>2</sup> There were an additional 76 interviewees who did not identify in their survey whether they were owners or renters.

## KEY FINDINGS RELATED TO RECORDED CONTRACTS FOR DEED

During Phase One, we examined thousands of county deed and CAD records to obtain an estimate of the total number of CFDs recorded from 1989 through 2010, and the total number of active RCFDs in the following 10 counties: Bastrop, Cameron, El Paso, Guadalupe, Hidalgo, Maverick, Starr, Travis, Val Verde, and Webb. We then assessed the importance of RCFDs against the backdrop of all recorded land sales transactions in each county, via what we termed the Transaction Usage Rate.<sup>3</sup> Finally, we assessed the importance of RCFDs against the number of residents living in colonias and IFHSs for the counties we examined, via what we termed the Housing Unit Usage Rate.<sup>4</sup>

Our key findings related to recorded Contracts for Deed are as follows:

- ❖ **RCFDs continue to be in use and recorded at significant rates in the border region and also interior counties far from the border.**
- ❖ **The use of RCFDs peaked in 2000-2001, around the time of the state legislative reforms, and has since leveled out at around 450 contracts recorded a year in all 10 counties combined.** However, we observed a recent upswing in Bastrop and El Paso counties.
- ❖ **We estimate that 16,261 total CFDs were recorded between 1989 and 2010 in the 10 counties, and that 5,451 of these CFDs are still active.** Most of the active RCFDs are in five counties: Bastrop, Travis, Webb, Maverick, and El Paso counties. The fewest outstanding contracts are in Starr, Guadalupe, and Val Verde counties.
- ❖ As one might expect, border counties with larger colonia populations had the largest absolute numbers of recorded CFDs. **Counties where colonias form a high proportion of the residential fabric generally had a higher Transaction Usage Rate.**

Some of our additional key findings related to RCFDs include:

**Buyers with RCFDs appear to have very low success rates in eventually obtaining a deed**, at least this was the case in the one county where we were able to obtain extensive title history data, Maverick County. With the assistance of a local title company, we conducted a closer analysis of RCFDs in Maverick—a county where RCFD usage has been significant and is ongoing. According to the title histories we reviewed, 45% of the CFDs recorded since 1989 had been cancelled (based on a 10% random sample of CFDs). Fewer than 1/5th of Maverick

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<sup>3</sup> Transaction Usage Rates were computed by taking the total number of CFDs recorded over a period in a particular county and dividing by the total number of recorded land transactions in the same period that involved a recorded CFD or instrument conveying ownership in a similar land sale transaction. We multiplied these figures by 1000. Since counties differ in their categorizations of deeds full details on which transaction types were included in these denominators are provided in the individual county narratives at Appendix A.ii of the Report. .

<sup>4</sup> Housing Unit Usage Rates were computed by taking the total number of CFDs recorded within a period in a particular county, divided by the estimated total number of housing units in the colonias or IFHSs located within that county. These are described fully in Chapter 3 and Appendix A.i of the Report.

County buyers with RCFDs made the transition to a deed, and 37% still hold an active RCFD. While not a perfect comparison,<sup>5</sup> the 45% failure rate stands in stark contrast to the formal mortgage market: Of homeowners nationwide who received institutional loans for the purchase of a home between 2004 and 2008 (i.e., origination date), 6.4% total, and 11.9% of Latinos, had lost their homes through foreclosure by February 2011, in the heart of the nation's foreclosure crisis.<sup>6</sup>

**For those buyers we surveyed with RCFDs who were successful in obtaining a deed, the conversion time was fairly short.** From our survey, we found that it took homeowners on average 8.4 to 10 years to convert from a RCFD to a deed.<sup>7</sup>

## KEY FINDINGS RELATED TO UNRECORDED CONTRACT FOR DEED

For our estimates of unrecorded contracts for deed (UCFDs), we had to turn to in-person interviews with households in colonias and informal subdivisions—close to 1,300 surveys were conducted from January to mid-April 2012. The nature of UCFDs—the fact that they are unrecorded—means there is no online record or other public record of their existence. However, even relying on the survey data alone turned out to be problematic, as we discovered that many households do not know what type of title they purchase with or currently hold. As a result, we ended up having to also conduct painstaking research to crosscheck the survey information with the ownerships records at the offices of the applicable county clerks and county appraisal districts. Through these channels, we were able to arrive at our estimates by determining which of the purported owners we interviewed held, or had previously held, a UCFD. However, , even arriving at these estimates was a challenge given **the archaic and inefficient recordkeeping systems for deed records that exist in Texas counties**. This phase of our research ran right into these recordkeeping system deficiencies, making it difficult to come up with precise calculations about the extent to which someone's ownership interests had never been recorded. As a result, we ended up developing a range of estimates (conservative, moderate and liberal) concerning the use of UCFD. The moderate estimates are presented below, with the other estimates available in Chapter 4.

As mentioned above, in addition to the six border counties where colonias were selected randomly, for our survey sample we also included informal homestead subdivisions (IFHSs) in two Central Texas counties (Guadalupe and Hays), as well a number of newer colonias in border counties, all of which were purposively selected. Our extrapolative data therefore applies only to randomly surveyed households and colonias in the six border counties we studied (Cameron, Hidalgo, Webb, Starr, Maverick, and El Paso). Our key findings in regards to Unrecorded Contracts for Deed are as follows:

❖ **UCFDs are still in active use in Texas in colonias and informal homestead subdivisions.** Of the owners we surveyed (across all eight counties) who recently

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<sup>5</sup> This comparison is also imperfect in that some of the CFD cancellations for Maverick County could have been truly voluntary, for cases where the buyer chose to walk away from the purchase, although we suspect that most of the Maverick cases were involuntary cancellations.

<sup>6</sup> Center for Responsible Lending, Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures (November 2011), <http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-exec-summary.pdf>.

<sup>7</sup> See Chapter 4 for a discussion of the differences between these two estimations.

purchased their homesteads, approximately one of out of five purchased with a UCFD. Recent buyers in older established colonias are more likely to have purchased with a UCFD than those in newer settlements. UCFDs are most often used with consumer-to-consumer transactions than in developer sales, although UCFDs can still be found in developer/land company sales.

- ❖ **An estimated 6,597<sup>8</sup> homestead owners—13.8% of homestead owners—in colonias<sup>9</sup> of six Texas counties (Hidalgo, Webb, Starr, Maverick, El Paso, and Cameron) had a UCFD as of 2012.<sup>10</sup>**
- ❖ **UCFDs are also found in the interior counties we surveyed** (8% of homestead owners surveyed in Guadalupe and Hays combined), with the highest rates in Hays County (11% of homestead owners currently hold UCFDs).
- ❖ **Consumers entering into UCFDs lack access to information about the land acquisition process and how to protect their interests.** As a result, these consumers also lack information on the importance of recording their documents in the county clerk records or do not understand the process for recording their documents.

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<sup>8</sup> With a margin of error that varies for between  $\pm 6.81$  and  $\pm 8.61$  as described in Appendix A.i.

<sup>9</sup> Appendix A.i. provides a full discussion of the colonia settlements and calculations to arrive at these estimates.

<sup>10</sup> This estimate is based on we what have deemed to be a “moderate” calculation of UCFDs (see the Methodology section in Chapter 4 for a discussion of how we arrived at the moderate estimate as well as alternative “conservative” and “liberal” estimates of UCFDs. Appendix A.i. provides a discussion on the margins of error for these estimates.

## THREE KEY TRENDS RELATED TO LAND ACQUISITION IN INFORMAL SETTLEMENTS

As mentioned above, during Phase Three of the Project we sought to offer more qualitative insights related to titling practices and informality in land transactions and to identify major trends and issues arising from current land acquisition processes in colonias and IFHSs. During this phase, we relied principally on a systematic analysis of the survey database and follow-up phone interviews, a follow-up mail-survey of absentee owners, and analysis of lot flipping in two settlements. Through this work, we uncovered three key big picture trends in relation to how property is being transferred in colonias and similar low-income subdivisions:

*Trend One: Developer-Financed Sales are Relying Largely on Deeds and Deeds of Trust but are Utilizing Other Problematic Practices that are Placing Homebuyers in Extremely Vulnerable Positions*

**Today, developers are much more active in land sales in newer subdivisions developed legally with infrastructure under the state's model subdivision rules than they are in older colonias and IFHSs.** Less than 50% of homestead purchases in the older settlements we surveyed are by developers, in contrast to 89% of purchases in post-1996 settlements.

**The legislative reforms of CFD in 1995 and 2001 have therefore been successful in steering most developers away from this form of land sale.** Developers selling land prior to 1995 in colonias relied largely on UCFDs as the primary means for financing land sales. Since then, they have turned to deeds and deeds of trust as the primary method of titling and financing land sales, although some still use contracts for deed, which are by and large recorded. Of developer sales occurring between 2003 and 2010 in colonias, between 73% and 83% utilized a deed and deed of trust financing mechanism.

However, we found that **residents obtaining developer-financing today still face a number of exploitative practices through their participation in a market that still lacks regulatory oversight and contains limited consumer protections.** Since the implementation of the State's model subdivision regulations in the 1990s, some developers are promoting subdivisions with full services, but at greater cost and with aggressive practices that are facilitating rapid repossession and causing residents to feel vulnerable and inhibiting them from making investments and improvements to their homes. Paradoxically, therefore, even though the lots in these newer subdivisions come with infrastructure, they contain some of the poorest housing conditions in the state. Although they are not considered colonias (since they have infrastructure), many of the purchasers are confronted with the same dire housing conditions and high vulnerability to losing one's lot without compensation that we saw in the late 1980s when the Texas Legislature and policymakers first began regulating land transactions in colonias. But unlike the purchasers of the 1980s, due to high repossession rates, these new would be owners who purchase from developers are becoming de facto renters, trapped in some of the most substandard housing conditions that can be found in Texas.

One of these **newer subdivisions with high rates of repossession** is Pueblo de las Palmas in Hidalgo County. Even though the developer and related and unrelated land investors are selling the lots with deeds and deeds of trust, we observed very high levels of rapid foreclosure by the developer and investors before selling to another buyer (what we call "flipping"). . Out of

100 lots we reviewed in the CAD records via a random sample, at least 45%<sup>11</sup> of the lots have been foreclosed upon at least once by the seller, who was almost always the developer or a local land investor (93% of cases). Of the lots foreclosed, 44% were foreclosed within a year of the sale, and 62% were foreclosed less than two years after the sale.

*Trend Two: Consumer-Financed Sales are becoming More Predominant and Have Higher Levels of Informality*

**One of our key findings in this Report is the growing predominance of consumer-to-consumer sales in older colonias and IFHSs, and a congruent heightened use of unrecorded CFD in these communities.** As these communities age and their residents obtain title to their properties, these same residents are gradually replacing developers as the dominant actors in land sales. We found that properties purchased from consumers have higher combined land and house prices, down payments, and initial monthly payments than properties purchased from developers. The buyers in these transactions also have higher incomes than those buying from developers. In contrast, the poorest buyers are more likely to buy from developers. All depend upon seller financing.

**Consumers attempting to buy or sell property lack access to information** about the process, how to comply with the law, and how to protect their interests. Many of these transactions happen without the assistance of real estate agents or attorneys. As they venture out on their own to handle land sales, many of them are outright unaware of the importance of deeds, the importance of checking the status of the title before purchasing a property, and of how to record their documents. Many of the residents surveyed, for example, were unaware what type of title they had received, if any, and if it had been recorded.

As a result, **consumer-financed transactions, in contrast to developer-financed transactions, have much higher levels of informality** and an array of related issues, with much higher usage of unrecorded contracts for deed. These transactions also typically do not involve title insurance or homeowners insurance, placing the buyers in an especially vulnerable position. We heard repeatedly in our follow-up interviews with selected owners that they could have benefited greatly from having more information about the land sales process and access to affordable assistance in preparing or reviewing their sales documents.

*Trend Three: Not Having a Will is Leading to Future Increases in “Clouded” Titles and Reproduces Informality*

**A final key trend that our research uncovered is that many more property transfers will be occurring via intestacy law in the coming two decades, most likely leading to a dramatic increase in clouded property titles,** with multiple owners and legal ownership that does not match the residents' understanding of ownership or the deed records. Only 10% of the owners we surveyed have a will. Meanwhile, 68% of the owners we surveyed in colonias and IFHSs developed before 1989 are 61 and over. Unless there is a rapid increase in the prevalence of wills among this senior population, as these owners pass away we can expect to see growing numbers of homeowners in these older communities dying and passing on their property via intestacy to the next generation, leading to an increase in clouded titles. This is the same trend that has been seen in older African-American communities in the state and country

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<sup>11</sup> We suspect that the foreclosure rate is even higher, but in the CAD records we were only able to observe the most recent three land transactions for each lot, and transactions information for some of the lots was missing or was indecipherable to us as to what had transpired in relation to the lot.

where property titles have passed across multiple generations via intestacy, leading to serious problems with delivery of disaster recovery and other government rebuilding assistance, barring families' ability to ever resell their property, market under-performance and under-valuation, and a host of other issues.

## ADDITIONAL TRENDS AND ISSUES

- ❖ **Renting is on the rise in colonias.** One-fifth of lots we surveyed in all 8 counties are being rented or loaned to kin or friends, invariably on an informal basis—70% of renters we surveyed do not have a rental contract. Renters are much younger than their owner counterparts.
- ❖ **Vacant lots and non-occupancy remain commonplace (up to 20%) in many colonias and subdivisions.** During the survey, we also observed that vacant lots were sometimes a product of abandonment. We suspect that title impediments and the lack of formal financing are a major contributor to these high levels of lot abandonment and vacancies in colonias.
- ❖ **Homebuyers in colonias and IFHSs are confronted with a number of different clouded title issues,** including insufficient legal descriptions, conflicting names in titling documents, and failure to obtain formal divorce decrees reallocating title to the property. In some cases, most notably those in Starr County, we could not even find legal descriptions for the lots.
- ❖ **Homeowners in colonias and IFHSs are not accessing the numerous benefits they are entitled to under the Texas homestead tax exemption.** Of the homeowners we surveyed, 47% have not obtained a homestead tax exemption from the county appraisal district.
- ❖ **The price of land in land-only transactions from our survey sample (calculated in 2012 dollars), has risen over time in colonias and IFHSs.**

## POLICY RECOMMENDATIONS

In the Report we outline a number of arenas that merit serious attention from legislators and other policymakers and break out directly from the CFD study we performed for TDHCA. Here is a brief summary of some of our key policy recommendations. These are discussed in more detail in Chapter Six of the Report:

- ❖ **Adopt an efficient, uniform, and modernized land information system that is easily accessible to the public in an online format.** Local jurisdictions' land records systems across Texas are archaic and costly, making it very difficult to access the status of someone's title today. Many records are not even available online. The grantor-grantee system for indexing records is particularly crude and outdated.<sup>12</sup> Over the long-run, reforms to land records systems would save the government, businesses, and landowners time and money.

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<sup>12</sup><http://www.columbialawreview.org/articles/foreclosures-and-the-failure-of-the-american-land-title-recording-system>.

- ❖ **Promulgate a simple deed and deed of trust template for consumer-to-consumer transactions** (in Spanish and English) that can substitute for the handwritten notes and other informal documents that we have described in this report.<sup>13</sup> These forms should carry clear instructions about notarization and filing requirements. Aggressive consumer education will be essential to the effectiveness of the templates.
- ❖ **Provide for stronger oversight of state laws protecting consumers in land transactions**, ensuring that consumers have somewhere to turn to when their rights under these laws are violated—whether this is through the Attorney General’s Office or by providing funding support to legal services providers.<sup>14</sup>
- ❖ **Create a program with the Texas Equal Access to Justice Foundation to provide legal assistance to low-income homebuyers in seller-financed transactions**, to review the sales transaction documents, advise them about reviewing the title, and assist with the overall transaction, as well as enforcement of the buyer’s rights once the initial purchase documents are completed. The program could be funded in a variety of ways, such as through a small fee on all recorded documents.
- ❖ **Provide for automatic conversion of a CFD into a deed and deed of trust as a matter of law**, which could automatically incorporate a set of rights and remedies codified in a statute.
- ❖ **Reform the State of Texas’s contract for deed conversion program to allow it to reach more homestead owners with CFDs.**
- ❖ **Promote a Sensitive Campaign for the Use of Wills.**
- ❖ **Improve and Reduce the Costs of Probate for Low-Income Home Owners.**
- ❖ **Cap legal interest rates for home and lot purchases for residential use at the higher of 12% or 7% over the amount charged by the Federal Reserve.**
- ❖ **Launch a major consumer education initiative to expand awareness of homebuyer rights and responsibilities, inheritance, and land purchase agreements.**
- ❖ **Promote the Creation of Community-Based Lending Institutions.** Support is needed to set up non-profit, community-based lending institutions to assist buyers with cleaning up their credit and with obtaining financing to purchase and improve their homes. Many successful models of these institutions exist across the United States and other countries.
- ❖ **Expand Access to the Texas Homestead Tax Exemption in Colonias and IFHSs.** As discussed above, 45% of the homeowners we surveyed do not have the homestead tax

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<sup>13</sup> Texas statutes contain many examples of promulgated forms, such as the affidavit of heirship in Chapter 52A of the Texas Property Code.

<sup>14</sup> When we spoke to the Attorney General’s office about enforcement of contract for deed laws, they reported to us that do not dedicate resources to this issue. That being the case, the most suitable candidates for legal assistance and enforcement are likely nonprofit organizations with a mission of delivering legal services to the poor.

exemption. Aggressive consumer education should also be provided to homeowners in informal subdivisions about their eligibility for the homestead tax exemption. Policies should also be adopted to provide homeowners with any assistance they need to complete the application paperwork. As a related issue, TDHCA should be providing homeowners with used manufactured home expanded assistance to obtain title to their used homes (which is needed for the homestead exemption) and provide greater enforcement against used manufactured home sellers who are not providing the required titling paperwork.

## **PRIORITIES FOR FURTHER RESEARCH**

Several of these policy arenas would benefit from further research, including:

- ❖ Research to examine more fully what the barriers are that families face in utilizing wills and the probate process, given the low rate of wills in colonias and IFHSs.
- ❖ Research to assess and better understand the nature and reasons for the existence of a significant number of vacant and abandoned lots that we observed in colonias, including the ways in which such processes impact upon poor land market performance, government resources, and neighborhood vitality.
- ❖ Research to better understand developer practices in new subdivisions, especially the subdivisions with rapid repossession and lot flipping. Also, more information is needed on what extent homebuyers who purchase with seller-financing in colonias and informal subdivisions and who ultimately are unsuccessful in becoming owners. It is also important to compare their trajectories with those who buy through the formal mortgage market, and to identify the triggers for failure rates for seller-financing.

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At the Texas Department of Housing and Community Affairs we would like to thank the follow staff for their administrative support and professionalism throughout, and for the careful reading and commentary over the twelve months of the study: Ms. Elizabeth Yevich, Director, Housing Resource Center, and Ms. Naomi Trejo, Administrator, Housing Resource Center. Also we thank Mr. Homero Cabello for sharing his extensive knowledge and offering his comments on a draft of the Report.

**Disclaimer:** In thanking the aforementioned, we wish to underscore that responsibility for the research findings, views, and recommendations contained in this report are those of the three principal authors (Ward, Way and Wood), and should not be construed as those of the TDHCA or their staff.

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This appendix outlines in full detail the methodology, colonia selection criteria, and statistical algorithms and adjusted weights that were applied in order to undertake the extrapolative analysis.

#### Appendix\_A\_ii\_Final County Title Search Data and Methodology.docx

Contains a detailed annotation of the types of title that were identified in each county and the data collection steps undertaken in each county.

#### Appendix\_A\_iii\_Status Table of Data Gathering.docx

A chart displaying the status of the data gathering for CFDs in the Fall 2011.

#### Appendix\_A\_iv\_Weights.xlsx

Weights that were applied to the data analysis.

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Table report on the final numbers of sites visited and completed survey returns.

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**Appendix C.i.b Final Survey Spanish.pdf**

Full Copies of the Questionnaire (Spanish and English)

**Appendix C.ii.b Final Letter of Presentation English.pdf**

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**Appendix C.iii Survey Training Guide.pdf**

**Appendix C.iv.a Flyer in English.pdf**

**Appendix C.iv.b Flyer in Spanish.pdf**

**Appendix C.v Codebook.pdf**

Database Codebook for the Public Databases in Appendix D

**Appendix C.vi Example of Lot Log.pdf**

Copy of lot log used for survey implementation and data tracking

**Appendix C.vii.a Final English Renter Concessions Owner Mailout.pdf**

**Appendix C.vii.b Final Spanish Renter Concessions Owner Mailout.pdf**

**Appendix C.viii.a Final Letter in English**

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## **Appendix D. Database**

**Appendix D.i. SPSS PUBLIC Full Electronic DataBase.SPS**

Electronic copies of the Master Database with all identifying marks removed. See Codebook in Appendix D.iv.

**Appendix D.ii. EXCEL PUBLIC Full Electronic DataBase.xls**

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- Appendix G.i Special Acknowledgements**

# Chapter 1. Introduction to the Contract for Deed Prevalence Project

## OVERVIEW OF PROJECT

This Report by the University of Texas at Austin is the result of a Contract for Deed Prevalence Research Project (the Project) that was undertaken from September 2011 to August 2012 on behalf of the Texas Department of Housing and Community Affairs (TDHCA) in response to a Sunset Advisory Commission recommendation (# 4.3) that the Department: “[C]onduct a one-time study of the current prevalence of contracts for deed in Texas colonias and to report the results to the Legislature by December 1, 2012.” Specifically, the primary goal of the Project was to provide an estimate of the current number of recorded and unrecorded Contracts for Deed (CFDs) in Texas colonias in six counties. The goals also included examining variations of informal titling practices occurring in colonias, recurring homeownership title issues, and comparison of CFD use in border colonias and interior informal homestead subdivisions.

A Contract for Deed (CFD) is a mechanism of seller financing for the purchase of a homestead in Texas. In contrast to a deed,<sup>1</sup> which conveys legal title up front to the buyer, a CFD promises to issue a deed to the buyer only after the buyer has paid the entire purchase price. In other words, legal title does not transfer to the buyer until all payments owed under the contract are completed. CFDs typically charge high interest rates (15-18%), which are not always transparent to the buyers, and also typically include severe forfeiture clauses in the event of missed payments, whereby the buyer loses equity that has been made towards the purchase. CFDs are referred to as “executory contracts” in the Texas Property Code, and have also been referred to as “poor man’s mortgages” and “land contracts” (Way 2010). Prior to 1995, CFDs did not have to be recorded in Texas, but starting in 1995 for border counties and in 2001 for other areas of the State, the law has required sellers to record them.<sup>2</sup> The Legislature has adopted several other reforms of CFDs and related purchase contracts, with the goal of protecting consumers from developer abuses in these transactions and enhancing their ability to benefit from the same benefits of homeownership that are extended to consumers with deeds and deeds of trust. It is the practice and use of CFDs that is a central focus of this Report. CFDs are not exclusive to colonias and low-income housing subdivisions, although these subdivisions are where CFDs are most common.

The Project was required to focus on CFD usage in colonias in six counties: Cameron, El Paso, Hidalgo, Maverick, Starr, and Webb counties. These counties account for approximately 70 percent of colonia residents in Texas, according to the Texas Office of Attorney General. We also received approval to add Val Verde to our study since members of the research team had conducted colonia surveys in Rio Grande City and were familiar with the use of CFDs in the county.

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<sup>1</sup> Purchases with deeds are typically financed with a note and deed of trust. See Chapter 2 for a deeper discussion on the common types of financing documents commonly utilized in Texas land transactions for the purchase of a homestead.

<sup>2</sup> See Texas Property Code, § 5.079.

A definition of colonias can be found in the Texas Government Code, Section 2306.581(1), which states:

"Colonia" means a geographic area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

- (a) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Section 17.921, Water Code; or
- (b) has the physical and economic characteristics of a colonia, as determined by the department.

Recent research demonstrates that conditions found in colonias are not exclusively a border county phenomenon, and that similar types of housing communities exist elsewhere in Texas in non-border areas outside of Texas' major cities such as Austin, Dallas-Fort Worth, Lubbock, Houston, and San Antonio. Therefore, The University of Texas research team proposed to the TDHCA that the analysis be extended to include several counties in Central Texas (Hays, Guadalupe, Travis, Bastrop) in order to better understand the informal land transaction practices occurring in these similar housing developments. As discussed below, we call these subdivisions "Informal Homestead Subdivisions" (IFHSs) (see Ward and Peters 2007) since these subdivisions provide a self-help or self-managed route, and thus informal route, for low-income populations to create a homestead. From prior research, we already knew going into this Project that, pre-1995, Contracts for Deed were historically the principal land transaction tool utilized in both colonias and IFHSs by developers who were subdividing agricultural land and selling off the lots for residential use with minimal or no infrastructure.

The Project was expected to generate three primary products:

1. Reliable estimates of **recorded** CFDs in Texas colonias; their origination dates; how that record has evolved over time; and the relative accuracy of those recorded CFDs, including clouded title issues.
2. Reliable estimates of **unrecorded** CFDs in Texas colonias and their origination dates.
3. A systematic analysis of other types of colonia real property records and other forms of informal residential colonia land sales to show the relative role of CFDs within the overall land development process. Part of that process was to analyze the conversions of CFDs after the 1995 legislative reforms of CFDs.

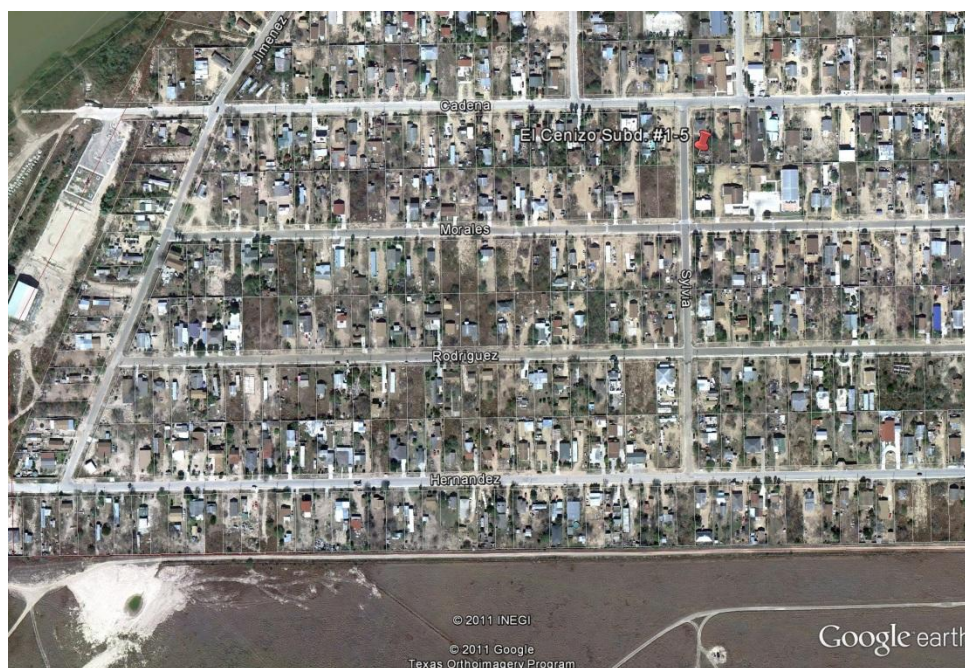
In addition to these three primary objectives, and in part related to goal number 1 above, the research team proposed a **fourth objective**, namely that the study should also offer improved understandings about the full range of homeownership acquisition methods and titling issues in colonias, including inheritance practices and the gifting of homesteads, seller financing between consumers, and absentee lots, and the extent to which these areas are related to increased informality and a concomitant "clouding" of titles. The Contract for Deed Prevalence Project was undertaken by a research team comprising faculty and graduate students at the University of Texas at Austin. It was co-directed by Dr. Peter M. Ward at The Lyndon B. Johnson (LBJ)

School of Public Affairs, and at the UT Law School by Heather K. Way, Director of the School of Law Community Development Clinic and Lucille Wood, Lecturer and Research Fellow in the William Wayne Justice Center for Public Interest Law.

## **DEFINING THE UNIVERSE OF STUDY: COLONIAS AND INFORMAL HOMESTEAD SUBDIVISIONS**

In setting out our areas of focus, we identified three broad types of colonia and informal homestead subdivisions (border and non-border), all of which embrace different degrees of informality in their development (financing, land titling, housing production, and infrastructure) as well as in their purchase and use. Differentiated along a number of variables such as location, ownership versus rental, type of populations served, age, and lot and housing footprints, the common thread is that these subdivisions all offer low-cost affordable modes of homeownership for lower-income households in ex-urban and semi-rural areas. The three types are:

### Classic border colonias



**Figure 1.1. Section of El Cenizo colonia alongside the Rio Grande in Webb County (20 miles south of Laredo).**

These are located mostly in the border region, almost always beyond the city limits and buried in the rural hinterland. The population of these settlements generally comprises very low-income Mexican or Mexican-origin populations. The settlement size varies from just a few lots on a single street or cul-de-sac, to large settlements comprising 300 lots or more. As the official definition states, these are distressed areas, with reduced infrastructure and very poor housing. Dwelling types are mixed, comprising self-built homes on a slab, trailers or manufactured homes of different areas, or hybrid arrangements where a camper or a trailer melds with a self-help extension. From the early 1980s onwards, colonias were platted for sale by developers and generally comprised lots without basic infrastructure that varied in size from a third to a full acre. They were generally sold by developers under Contract for Deed or oral agreements and,

starting in 1989, were the focus of federal and state government attention that sought to prevent their proliferation and ensure basic infrastructure was provided (Ward, 1999). Legislation in 1995 required that all new residential subdivision developments in 17 counties on the border be undertaken with infrastructure installed from the outset (or a bond be provided to cover infrastructure costs).<sup>3</sup> Figure 1.1 is an aerial photograph of El Cenizo – one of the largest colonia subdivisions in the border region. while Figures 1.2 to 1.3 are images of typical self-built or self-managed homes that can be found in colonias and informal homestead subdivisions today.



**Figure 1.2. Typical self-help building in Starr County. (Note original house at rear serving as a temporary dwelling.)**



**Figure 1.3. Stick frame housing (modular) on slab, Cameron Park, Cameron County**

<sup>3</sup> This legislation was expanded in 1999, via Senate Bill 1421, to cover all 28 counties within 50 miles of the international border.



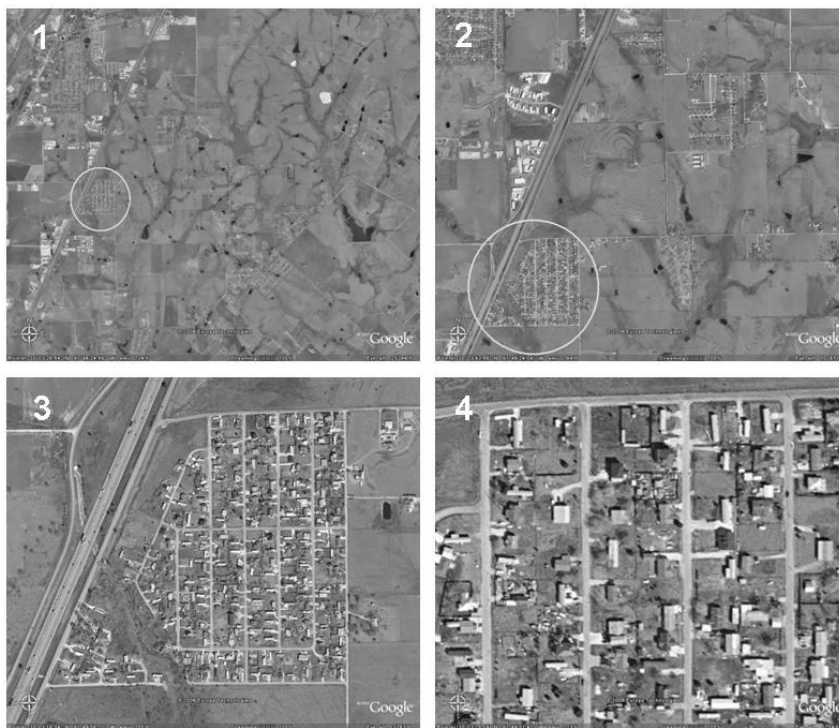
**Figure 1.4. Camper, plus trailer and carport,  
Mike's Colonia Starr County**



**Figure 1.5. Santa Maria Norte, a new subdivision in Cameron County  
A new (post-1995) border informal homestead subdivisions.**

These subdivisions are a new frontier of low-income neighborhoods that have been emerging since 1995 in some counties in the border (such as Hidalgo and El Paso). Unlike the colonias of yesteryear, these subdivisions are often quite large subdivisions (see Chapter 5) with basic infrastructure promoted by developers under the state’s model subdivision rules. Given that they have basic infrastructure from the outset, the State of Texas does not define these subdivisions as colonias, although our study shows that they share many of the worst housing characteristics that traditionally are associated with the early phase of classic colonia expansion in the 1980s. However, as we discuss further in Chapter 5, many buyers in these new subdivisions do not invest significantly in home improvement, but instead live in shacks or campers that can be quickly moved off site in the event of default and repossession, which we suspect is due to the higher costs of land in these new colonias and the high levels of vulnerability to repossession if land payments are missed. Where appropriate, this study includes findings about residential land sales practices in these new subdivisions since they are likely to be the target for state intervention in the coming years.

Non-border informal homestead subdivisions (IFHSs).



**Figure 1.6 Aerial photos of Informal Homestead Subdivision, Hillside Terrace, Hays County, (alongside HI35)**

(IFHSs) are very similar to colonias, although to date they have rarely been perceived to present the same problems as colonias. Non-border IFHSs can be readily observed from the air, several miles into the rural hinterland of cities. These settlements are distinctive from their formal subdivision counterparts, given their low density, larger individual lots sizes, idiosyncratic dwelling arrangements and placement on lots, poor housing conditions, oftentimes unpaved streets, and, when seen from above, the numerous “lozenge”-shaped trailer home roofs (Figure 1.6). Compared to their colonia “cousins,” households in IFHSs are usually not quite as poor

(with average incomes of \$20,000-\$25,000),<sup>4</sup> and being further from the border they are less likely to be exclusively or predominantly Hispanic, but are mixed ethnicity and race, and sometimes may even be predominantly Caucasian. Infrastructure services are oftentimes austere, but are much less likely to be entirely absent. A higher percentage of the housing units are substandard manufactured homes (Figure 1.7), which are mixed in with self-built dwellings and extensions, stick frame homes, and a smattering of higher standard custom-built homes.



**Figure 1.7. Site Delivery of a Used Manufactured Home, IFHS in Hays County**

## **RESEARCH STRATEGY**

Full details of the methodology and the research strategy are provided in the following chapters and associated appendices; suffice here to mention that the study used a “mixed methods” approach that included interviews with key informants, focus groups, archive analysis, surveys, aerial imaging, etc. The Project was designed in three stages or phases. Phase One, which is laid out in Chapter 3, was undertaken primarily in the first four months and focused upon getting a hard count of the recorded Contracts for Deeds in the targeted counties, seven of which were on the border (see above), along with counties in Central Texas around Austin and San Marcos (Bastrop, Travis, Guadalupe and Hays). These latter were selected for pragmatic reasons, being close to the University to facilitate fieldwork and data collection, and had already been the focus of housing studies by some of the team members.

Phase Two, which ran from December through April, began with an initial burst of household surveys in five counties (Cameron, Hidalgo, Starr, Webb and El Paso) in early January, followed by later surveys in February and March in Maverick, Hays and Guadalupe counties. Household surveys in colonias and border and non-border informal homestead subdivisions were essential to begin the quest of tracking unrecorded CFDs. In order for us to extrapolate settlement findings to the wider county level in the border counties, our selection of the colonias was

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<sup>4</sup> In border colonias, household incomes are much lower: annual incomes of \$12,000-18,000 a year are commonplace.

random, as was selection of the households interviewed. In Central Texas, the subdivisions we surveyed (Hays and Guadalupe) were purposively selected, with a random selection of households. In these two counties we were seeking comparative insights about titling, and not to make any generalizations or extrapolations to the county level. In total, during Phase Two we conducted surveys in 65 colonias and informal homestead subdivisions and completed nearly 1,300 household surveys (our final sample size was 1,287). The survey database, complemented by painstaking tracking of individual title histories in the County Appraisal District and County Clerk records allowed us to arrive at the estimates of unrecorded CFDs. A detailed discussion of our Phase Two methodology and results is described in Chapter 4.

Having fulfilled the first two quantitative estimates required by the TDHCA, Phase Three of the Project sought to offer more qualitative insights related to titling practices and informality in land transactions. In this phase, which ran from May through August, we were especially interested in figuring out major trends and issues arising from informal land acquisition processes. The goal was twofold: first, to better understand the processes themselves, and second, to inform TDHCA and the Texas Legislature about the major trends and issues arising from these processes and appropriate policy interventions. Thus, Phase Three comprised further analysis of the database to examine issues such as inheritance, changing developer practices, consumer-to-consumer sales, and lot abandonment. We also conducted some additional interviews and survey analysis in order to develop deeper understandings of these issues. A discussion of our Phase Three findings is included in Chapter 5, followed by a wrap-up discussion of major trends, policy recommendations, and suggestions for future research in Chapter 6.

## **ORGANIZATION OF THE REPORT**

Chapter 2 of the Report provides a more detailed discussion of the nature of CFDs and other common land sales transactions, in addition to the methodology we utilized in conducting the Phase Two survey, including our selection of the colonias we surveyed. Chapters 3 and 4 present the analysis and data for recorded CFDs (Chapter 3), and unrecorded CFDs (Chapter 4). The Phase Three findings are presented in Chapter 5, beginning with a detailed comparative analysis of the survey database by counties as well as by different types of colonias and subdivisions. Our principal conclusions together with recommendations for policies and further research are offered in Chapter 6. A large number of supplemental appendices, which are listed in the Table of Contents, are also part of the Report. The full set of appendices is available at [www.lahn.utexas.org](http://www.lahn.utexas.org) under “Texas Housing Studies/TDHCA Contract for Deed Prevalence Project.”

## **ACKNOWLEDGEMENTS**

Throughout the year, data collection was directed by the three faculty co-directors with the close assistance of more than 40 graduate students from the University of Texas School of Law and the LBJ School of Public Affairs, as well as several other programs at the University. This Report would not have been possible without their contributions. In particular we would like to recognize the following UT graduate research assistants who, during the course of the year, played an especially significant part in the research design, surveys, field work, data management, and analysis: Lissette Aliaga (Sociology), Noah Durst (LBJ), Erika Grajeda (Sociology), Carlos Olmedo (LBJ), Molly Powers (Law), Alejandra Reyes (Community and Regional Planning), Allison Schmitz (Law), Adam Torres (LLILAS/LBJ), and Veronica Chidester (Law), as well as John Meyers (UT undergraduate). A full listing of Texas State and NGO officials and staff who provided support and input is included at Appendix G.

## **Chapter 2. Overview of Contracts for Deed, and the Research Strategy and Methodology Adopted to Analyze the Prevalence of Contracts for Deed**

In this chapter we lay out the research methodology we adopted to analyze the prevalence of Contracts for Deed in Texas.

### **OVERVIEW OF CONTRACTS FOR DEED AND LAND TITLING IN TEXAS**

There are three primary mechanisms for titling and financing the purchase of a homestead in Texas: (1) a deed with lender financing via a deed of trust; (2) a deed with seller financing via a deed of trust; and (3) a contract for deed. We use the term “homestead” here to refer to the purchase of a lot with a home on it, as well as a purchase of just a lot where the buyer has the intention of moving a manufactured home or other residential structure onto the lot. In both instances, we use the term to refer to a property that someone intends to own and occupy as their primary residence.

#### *Bank Financing: Deeds and Deeds of Trust*

The most common pathway to homeownership is a deed with a deed of trust, with the buyer obtaining financing for the purchase via a loan from a mortgage lending institution. In a typical bank-financed transaction, the buyer will retain a real estate agent to assist with the acquisition process, including the earnest money contract for the purchase of the home. The lender will require an appraisal, survey, and title insurance policy to protect the lender’s interest in the transaction. When the title is given a clean bill of health and the financing is lined up, the closing on the purchase will occur at a title company office. A licensed attorney will oversee the preparation of the deed and financing documents, and an escrow agent will oversee the closing and the recording of all the appropriate documents. As part of the closing, the agent ensures that the purchase price for the home (from the buyer’s down payment and the bank financing) is paid to the seller.

The transfer of the legal ownership in the property from the seller to the buyer occurs through the deed, which is executed at the closing. In Texas, there are numerous variations of deeds, each offering a different type of warranty, if any, regarding the title being transferred. The two most common deed forms used in Texas homestead sales transactions are warranty deeds and special warranty deeds.

The loan agreement between the buyer and the lending institution that is used to finance the purchase of the property is referred to as a “note” in Texas. The deed of trust (also referred to as a lien) is the document used to secure the note. The deed of trust is recorded in the real property records in the country where the property is located and grants the lender the ability to foreclosure on the property if the buyer defaults on the note.

#### *Seller Financing: Deeds and Deeds of Trust*

When a buyer is unable to secure bank financing to purchase a home and does not have the personal means (either personally or through family) to pay cash up front for the purchase, the buyer is left with the option of trying to obtain seller financing for the home. Seller financing means that instead of receiving an upfront payment for the home via the bank, the seller will receive payments towards the purchase price directly from the buyer over a period of time,

typically ranging from five to thirty years.

When seller financing is utilized, the seller has two options as to how the titling and financing for the transaction will be handled. The first option is to use a deed with one or two forms of security: a deed of trust and vendor's lien. Similar to a bank-financed transaction, the buyer receives the title from the seller upfront, via the deed, as soon as the closing documents are signed and down payment is made. The first form of financing is a deed of trust, which, as with a bank-financed transaction, is used to secure the note and can provide the seller with a non-judicial foreclosure remedy in the event the buyer defaults on the note. The second form of financing is a "vendor's lien," which is incorporated into the deed document, and also provides the seller with remedies if the buyer defaults against the terms of the loan note, similar to a deed of trust. When a vendor's lien is part of the deed, it is referred to as a "deed with vendor's lien." Both the deed (with or without the vendor's lien) and deed of trust are recorded in the county deed records.

A seller-financed purchase made via a deed and deed of trust can range in levels of formality. Similar to buyers obtaining bank financing, some buyers receiving seller financing go through a very formal process with a real estate agent and a title company to scrutinize the transaction and assist with the paperwork, and a title insurance policy to safeguard against title issues. In other transactions, with much lower levels of formality, the seller handles all the paperwork, the closing happens around the kitchen table, and no outside parties are involved to review the transaction or the title for irregularities or problems.

#### *Seller Financing: Contracts for Deed*

As an alternative to using a deed of trust and deed, a seller can utilize a contract for deed. With a contract for deed, the seller promises to issue a deed to the buyer only after the buyer has paid the entire agreed purchase price. In other words, legal title does not transfer to the buyer until all payments owed under the contract are completed. Contracts for deed are referred to as "executory contracts" in the Texas Property Code, and have also been called a "poor man's mortgage," and "land contract." Prior to 1995, contracts for deed did not have to be recorded, but starting in 1995 for border counties and in 2001 for other areas of the State, the law has required sellers to record them.<sup>1</sup>

A key element of most contracts for deed is the forfeiture clause—which provides that if a buyer defaults under the contract, the seller can declare the contract terminated, regain possession, and retain the buyer's prior payments as liquidated damages.<sup>2</sup> The following figure is an excerpt of a forfeiture clause from a contract for deed that we came across during our fieldwork:

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<sup>1</sup> See Texas Property Code, § 5.079.

<sup>2</sup> The Texas Legislature, in its attempt to soften the harsh impacts of contracts for deed on consumer, adopted legislation barring a seller from enforcing a forfeiture clause after the buyer has paid 40% of the amount due under the contract or 48 monthly payments. Under the law, once a buyer has made the prerequisite payments, the seller must follow a non-judicial foreclosure process similar to that used in foreclosures under a deed of trust and refund the buyer whatever equity is left in the property after the foreclosure sale. See Texas Property Code, § 5.066.

The owner and buyers acknowledge the agreement to be in the best interest of all parties and any changes can only be done by the said property owner. The buyers must abide all terms. Default due to non-payment by buyers in turn gives full ownership to owner with NO REFUNDS, no payments will be refunded to buyers at no given time, buyers agree to said terms.

Said agreement is made between the said parties:

**Figure 2.1. Forfeiture Clause Excerpt from a Contract for Deed in El Paso County.**

During the contract term, the buyer with a contract for deed is typically responsible for maintenance of the property and payment of the taxes and insurance, but this depends on the terms of the contract and is not always delineated. Typically (but not always in the case of non-developer transactions), contracts for deed include interest on the sales price, with rates significantly higher than conventional financing rates. With contracts for deed 12 to 18% interest rates are common, although we came across even higher rates in the field, such as in the following example from El Paso County:

Dear Landowner,

This letter contains several valuable pieces of information for you.

1. STATEMENT OF ACCOUNT ACTIVITY FOR 2005

In the calendar year 2005 you paid \$ 1121.29 in principal and \$ 2081.60 in interest at 20.0% APR interest. Your present note balance is \$ 6447.11.  
As of this date, your next payment is due on May 28, 2006.  
You have 228 payments remaining due before your contract is fully paid. This number may increase if you do not make all of the payments on time. There are no insurance coverages required or collected under the Contract.

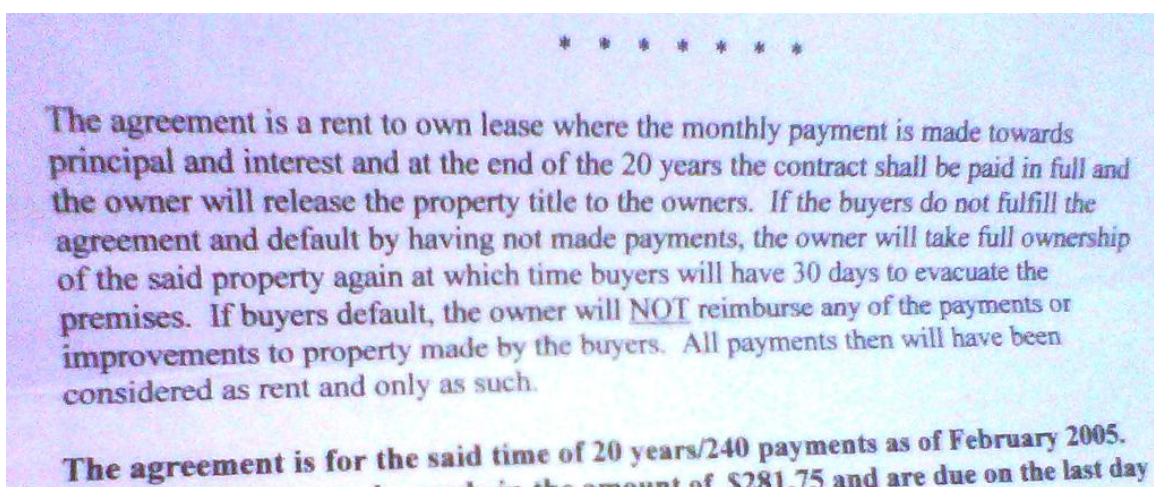
**Figure 2.2. Excerpt from a Seller's Statement of Account Activity to a Buyer with a Contract for Deed in El Paso County.**

A variation of contracts for deed is the lease-to-own contract.<sup>3</sup> In a typical lease-to-own contract, (also referred to as rent-to-own and lease-option contracts), the homebuyer pays a nonrefundable option fee up front, similar to a down payment. The option fees can be quite

<sup>3</sup> Recognizing that lease-to-own contracts operate similarly to contracts for deed and that developers were using these to bypass the legislative restrictions on contracts for deed, in 2005 the Texas Legislature included lease-to-own contracts in the definition of "executory contracts" in the Property Code, thereby extending the protections for buyers with a contract for deed (i.e., executory contracts) to buyers with a lease-to-own contract.

significant and resemble the down payments made in a contract for deed sale. With a lease-to-own contract, the homebuyer makes monthly payments under a lease for a set term. At the end of the lease term, if the buyer has followed the terms of the lease, the buyer is eligible to purchase the home and obtain title from the seller. To exercise the purchase option, to the extent there are payments still owed under the contract, the buyer must obtain either third-party financing or seller financing for the remaining cost of the purchase. If the buyer is able to secure the financing or otherwise pay off the remaining amounts owed under the contract, the seller then executes a deed transferring title to the buyer.

Similar to a contract for deed forfeiture clause, under the terms of a typical lease-to-own contract the buyer forfeits all payments made under the contract, including the option fee, in the event of default or inability to obtain the financing at the end of the option period. Moreover, as shown in the following example, the buyer also loses the right to recover from any improvements made to the property:



**Figure 2.3. Excerpt from a Lease-to-Own Contract in El Paso County.**

Contracts for deed and lease-to-own contracts range broadly in degree of formality. The most formal documents are those used in developer-to-consumer transactions, and involve a lengthy and detailed typed contract including the provisions discussed above such as forfeiture clauses, interest terms, payment obligations for taxes and insurance, etc. These formal contracts vary in their compliance with state legislation concerning inclusion of required statutory notices and other rights available to purchasers. Two typical formal contracts for deed used by a developer that we encountered in the field are available at Appendices F.i and F.ii.

At the other end of the spectrum, the most informal of these contracts are not written but are merely oral agreements or understandings in which there are no documents other than possibly a receipt, to document the agreement. We have encountered these oral agreements in consumer-to-consumer transactions—such as when the former resident is selling directly to a new resident—where the parties lack the means to access assistance with papering the transaction, or lack knowledge of the importance of doing so. At best, the only proof that buyers have of their oral purchase agreement is a receipt, such as in the following example:

15/11/09  
Yo [redacted]  
ago Entrega de 5000 Dolares  
al señor [redacted]  
Por un Terreno que se va a  
Traspasar Junto con la Traila  
que dando de acuerdo Firma de  
Comformidad Las Personas  
[redacted] [redacted]  
vendedor comprador  
[redacted] [redacted]  
vendedor Testigo

**Figure 2.4. Receipt for Oral Contract for Deed in Guadalupe County, 2009  
(with confidential information redacted)<sup>4</sup>**

In terms of degrees of formality, in between the oral agreement and a formal contract for deed lies the informal contract for deed. Informal contracts for deed, which are seen most often in consumer-to-consumer transactions (vs. developer sales), involve a document prepared from scratch by either the buyer or seller with varying degrees of information about the terms of the transaction. These agreements are typically very cursory and fail to include required statutory disclosures and notice provisions, as well as basic information about the parties' rights and responsibilities under agreement. Examples of these more informal agreements are contained in various folders in Appendix F. As seen from the example below, these informal contracts are often handwritten:

<sup>4</sup> See Appendix F.ix.a. for the document. English translation: "I, (redacted confidential information), hereby certify having received the sum of \$3,000 (three thousand dollars) for property located at (redacted confidential information), El Cenizo, Texas, and that I, (redacted confidential information), am obligated to (redacted confidential information), that I agree in the presence of an attorney to go ahead with the arrangements of this property in accordance with these \$3,000 (three thousand dollars) today, April 27, 2002, and to continue paying \$200 a month until \$1,800 (eighteen thousand dollars) has been paid. Witnesses to this contract is (redacted confidential information)"

4/27/02

POR MEDIO DE LA PRESENTE  
SERTIFICO YO GREGORIA [REDACTED]  
HABER RESIBIDO LA CANTIDAD DE  
3000 TRES MIL DOLARES, POR CONCEPTO  
DE UNA PROPIEDAD LOCALISADA  
EN [REDACTED] EL CENISO TEXAS  
Y ESTAR YO GREGORIA [REDACTED]  
COMPTOMETIDA PARA MARIA [REDACTED]  
ESTAR DE  
ACUERDO FRENTE A UN ABOGADO  
PARA SEGUIR CON LOS ARREGLOS  
DE ESTA PROPIEDAD EN ACUERDO  
DE ESTOS 3000 TRES MIL DOLARES  
DE HOY 27 DE ABRIL DE EL 2002  
Y PARA CONTINUAR CON LOS PAGOS  
200 DOLARES MENSUALES HASTA  
TERMINAR EN TOTAL 1800 DIES  
YOCHO MIL DOLARES. TESTIGOS DE  
ESTE CONTRATO ES

**Figure 2.5. Excerpt from a Handwritten Contract for Deed in Webb County, 2002 (confidential information redacted)<sup>5</sup>**

### *Deeds in Lieu of Foreclosure*

A deed should typically provide higher levels of security than Contracts for Deed, given that the buyer with a deed has title to the property and legal protections from day one in regards to foreclosure procedural requirements in the event the buyer defaults on the note. However, during our fieldwork, we heard about issues with sellers who provided deeds to their buyers but, concurrently, required the buyers to sign over a deed in lieu of foreclosure during the closing. This meant that a buyer, while thinking she had purchased a home, was instead required to give her title back to the seller at the closing. If the buyer ever defaulted on the terms of the note or vendor's lien, the developer would then record the deed in lieu, bypassing the foreclosure process and stripping the buyer of her ability to earn any equity on the property. An example of one of these transactions is available at Appendix F.xi.a. & b.<sup>6</sup>

<sup>5</sup> See Appendix F.vii.a. for the complete agreement. English translation: "I, (redacted confidential information), hereby certify having received the sum of \$3,000 (three thousand dollars) for property located at (redacted confidential information), El Cenizo, Texas, and that I, (redacted confidential information), am obligated to (redacted confidential information), that I agree in the presence of an attorney to go ahead with the arrangements of this property in accordance with these \$3,000 (three thousand dollars) today, April 27, 2002, and to continue paying \$200 a month until \$1,800 (eighteen thousand dollars) has been paid. Witnesses to this contract is (redacted confidential information)"

<sup>6</sup> In this example there are two documents, one is the Warranty Deed, the other is the signed in Warranty Deed (in Lieu of Foreclosure) – both of which we signed simultaneously. In this particular case the CAD shows that the property "flipped" back to the seller within six months.

## THE RESEARCH STRATEGY AND METHODOLOGY

As outlined in the introduction to Chapter One, the research request from TDHCA was to conduct a one-time study of the current prevalence of Contracts for Deed in six border counties (Cameron, Hidalgo, Starr, Webb, Maverick, and El Paso) where colonias and colonia populations are most numerous. Implicit in the agency's request was to offer an assessment on how the use of contracts for deed had changed over the past 20 years, especially since the introduction of legislation to regulate CFDs in 1995 (in the border) and 2001 (elsewhere).

Traditionally, the policy focus in Texas around contracts for deed and other colonias-related issues has been almost exclusively in the border counties. Based upon recent research findings, including findings related to the growth of colonias-type communities outside the border counties, our team obtained approval from TDHCA to broaden our geographic scope for several parts of the project analysis to include Val Verde on the border (Phase I); and Bastrop, Travis, Hays, and Guadalupe counties in Central Texas (Phases I and II).

### *Summary of the Research Strategy*

There were three main elements to our research strategy, each of which formed a separate phase of the study. **Phase I**, conducted largely in the fall of 2011, sought to generate the baseline data of recorded contracts for deeds in each county. It was anticipated here that the principal data repositories would be records in the County Clerk offices, which is where all deeds and other land transactions are recorded. Counts for these Recorded Contracts for Deeds (RCFDs) would be compiled for the period 1989 through 2010. The main focus was to assess the current importance of RCFDs against the backdrop of all recorded land sales transactions in each county, as well as the continuing significance of RCFDs as a means of lot acquisition in colonias and other low-income subdivisions.

Given that it is widely known that many CFDs go unrecorded, the aim of **Phase II** was to estimate the numbers of unrecorded CFDs that exist in colonias and what we call informal homestead subdivisions (see Chapter 1). Since the data are not available in government records, the strategy here was one of sampling and conducting household surveys as a first step to tracking the relative contemporary of importance of UFCDS as a means of acquiring a homestead. Because TDHCA asked us to provide county-wide estimates for six border counties (Cameron, Hidalgo, Starr, Webb, Maverick, and El Paso), the challenge was to ensure an effective sampling strategy that would allow us to extrapolate to the county level in these six counties. We conducted the household surveys in January through March, which ultimately resulted in 1,215 face-to-face household interviews in 65 communities across eight counties (two of which were non-border). Much of the remainder of this chapter will describe and explain the methodology that we adopted in order to gather the data and arrive at extrapolated estimates for the six border counties.

While arriving at these estimates of RCFDs and UCFDs was the primary goal of the research project, the team was always interested in achieving a better understanding of the nature of land acquisition and colonia development over time, especially in so far as this related to different deed types and property transactions. We hoped that this deeper understanding would facilitate the ability of policy makers to respond to the changing practices of land transactions in colonias; the kinds of titles and deeds that are being used in these land transactions; the dynamics of colonia land markets within a context of seller financing and an absence of formal financing opportunities; and the implications for title transfer and the maintenance of "clean" titles as the

children of aging colonia homeowners inherit the properties from their parents, invariably under intestacy laws given that few have wills.

Answering these questions forms part of **Phase III** of the project. In large part, our understanding of these issues was informed throughout the year by qualitative analysis of developer practices, discussions with NGO and government agency staff, focus group discussions, archival analysis, literature reviews, etc. However, the main thrust of the Phase III data analysis was set aside until Phases I & II were completed, and thus was conducted mostly from April through August of 2012. In addition to the (sometimes) anecdotal and qualitative information already in hand, Phase III comprised a more systematic analysis of our research database developed from the surveys, including comparative observations (1) between counties; (2) between different types of colonias and subdivisions; and (3) between owners and non-owner households living in colonias.

Another goal of Phase III was to dig deeper into our understanding of colonias land transactions and related issues by undertaking follow-up analyses of the data and conducting additional phone interviews with a small number of “interesting cases” of households we had surveyed in January-March. Among other things, interesting cases included owners who were renting out their properties; individuals who were thinking about inheritance in innovative ways (whether formally or informally); sellers and buyers using new types of UCFDs, etc. We also wanted to conduct a follow up analysis to understand more about the significant number of unoccupied (vacant) lots that had fallen into our survey sample, to better understand why some lots remained unoccupied and why others had been abandoned. We also undertook further analysis of developer practices and the extent to which certain colonias had high “flip” rates in which developers appeared to be rapidly repossessing lots that they had sold previously and selling them to new buyers, sometimes using special types of transactions to facilitate the process. In short, Phase III provided an opportunity for us to reflect upon the changing nature of CFDs and land transactions in colonias in order to begin to anticipate future policy challenges and thereby inform the Texas Legislature and state agencies about possible responses that might be undertaken.

The remainder of this chapter provides a discussion of the methodology and instruments that we used in order to conduct the survey used in Phase II and Phase III.

## **Methodology for Estimating Unrecorded Contracts for Deed**

From the outset of the research project, our research team was interested in **both** the colonias in the six border counties that the TDHCA had specified for inclusion in the study, as well as similar informal homestead subdivisions in non-border counties of Central Texas. Although TDHCA agreed to our request to broaden the scope of study beyond the six counties, a core requirement was that, whatever strategy we adopted, we should be able to arrive at estimates of CFD usage for colonias across the whole county for the six border counties. Thus, Phase One was predicated upon collecting data primarily from the County Clerks’ Office about Recorded Contracts for Deed at the county level, and would, we hoped, provide us with detailed and accurate counts of those recorded CFDs over time (since 1989). Here the challenge would be to search out the best sources and access point (on-line, letter requests, or in person), and, where necessary, to complete the dataset using surrogates such as searches through the online county appraisal district records, title histories performed by title companies, and on-site visits by members of the team. Although the classification systems for land records varied widely in the counties we studied, and the ease of access to complete records was sometimes

problematic and frustrating, Phase One was largely an exercise in gathering data and cross checking the data for completeness and accuracy in order to come up with reliable counts for each county over time. Once we had reliable hard counts in hand, we were able to gauge the relative prevalence of recorded CFDs as a proportion of the total recorded property sales transactions for each year (per thousand), as well as a “usage rate” of recorded CFDs in the colonias of each county.

Full details about the methodology and data analysis for Phase One are included in Chapter Three and associated appendices and are not described here. Instead, the remainder of this chapter describes the strategy and methodology to arrive at estimates on **unrecorded** CFDs that could be gathered only through household surveys of residents. For obvious reasons, a survey of all colonia households in the county was not feasible, so a **sample survey** had to be drawn that would allow us to subsequently **extrapolate** our findings to the county level within acceptable and clearly stated confidence limits. The following discussion, complemented by a more detailed Methodological and Statistical Appendix A.i, sets out: (1) how the colonias and subdivisions we surveyed were selected; (2) how we sought to ensure that one could extrapolate statistically from the survey data; and (3) the algorithms and weights that we applied in order to conduct the statistical analysis.

Researchers often adopt a random selection approach if the goal is to generalize about a settlement or about typical findings from a local universe of settlements, and that selection is often “purposive” according to a particular criterion or realm of interest: e.g., renter households, female heads of households, and so on. However, those interested in policy interventions will often focus their attention on “hot spots” where they expect to gain special insights or findings about a particular locale. An example in the present context would be to choose particular settlements where unrecorded CFDs are known to be common, and where nefarious practices by developers are rife. However, in order to generate countywide extrapolations from the settlements selected requires that a **random selection** be undertaken within a specified sample universe (e.g., colonias in each county in this instance), as well as the actual selection of households that fall into the survey. Thus, random selection criteria are central to one’s capacity to arrive at countywide estimates. It is for this reason that we have an obligation to provide a detailed methodological account of how we gathered and processed the selection data.

Nevertheless, while we adopted the random selection survey design both for colonias and households in order to construct our dataset, we also decided to include a number of colonias and subdivisions that were **purposively** selected. These consisted of newer subdivisions in unincorporated areas, many of which had been developed since 1995 under the state-mandated “model subdivision rules” (i.e., with basic infrastructure), and where we had heard that developers were now most active in conducting land sales. In the dataset, as well as in many parts of the data analysis, we separate (and compare) the findings between the randomly- and purposively-selected settlements. The important point to be underscored here is that **extrapolations to the county level are only made from the colonias that were selected at random**. The crux of this analysis relates to Chapter Four, where we seek to estimate the frequency of unrecorded contracts for deed for each of the six border counties we studied in Phase II.

Appendix A.i sets forth the details on our analysis, and includes: 1) how we went about identifying the colonias in each county and how we estimated the number of housing units in those colonias in order to create our sampling frame; (2) an explanation of how sample sizes were determined in each county and the criteria used in order to select the survey colonias; (3) a description of the types of survey materials gathered (face-to-face and mail-back surveys) and

the relative rates of return and survey counts achieved; and (4) the statistical methods used to correct for possible sources of bias such as non-responses, unknown eligibility, and the effects of variances on key variables. The following are offered as a shorter overview, but we urge readers wishing to fully understand our analysis to refer to the more detailed Appendix A.i.

### *Population Estimates*

We began our random colonia selection by calculating the approximate number of housing units in the colonias in each of the six counties (Cameron, Hidalgo, Starr, Webb, Maverick, and El Paso). To do this, we relied primarily upon the 2010 U.S. Census Block Data and the Colonias Boundary Cartography data made available online by the U.S.-Mexico Border Environmental Health Initiative.<sup>7</sup> There, of the 1,808 colonias listed, some 1,717 fell within the six selected counties of study. The actual numbers for each county appears in Appendix A.i, “Colonia Selections and the Statistical Analysis in Detail.”

Because the physical boundaries of the colonias did not fall precisely within individual census blocks for which population data were readily available, we used an approach known as “census overlay,” which involves an aerial weighting of the target area of analysis (in this case, each colonia) in order to estimate the population and number of households per colonia from the multiple census blocks (see Appendix A.i, pp.3-5). This allowed us to rank order colonias by the estimated numbers of household units.

### *The Selection of the Colonias to be Surveyed*

Differences in colonia size are often correlated with differences in age, development type, social capital proximity to amenities, and many of the larger colonias have been the target for preferential state intervention since the early 1990s. Therefore, we needed to ensure that we included a range of colonia settlements by size, and not just the largest colonias, which might have offered a somewhat distorted picture of the deed experience and trajectories for the county at large. With the estimated population figures in hand, we next selected between seven and twelve<sup>8</sup> colonias to survey in each of the six counties. This was done through a Probability Proportional to Size (PPS) technique, which assures the selection of both smaller size as well as larger colonias within a given sampling frame. That is, for each county, we first ordered all of the colonias<sup>9</sup> in the county by size, and then randomly selected a specific number of colonias within each size range based on the proportion of colonias falling within each such size range in that particular county.

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<sup>7</sup> U.S.-Mexico Border Environmental Health Initiative, <http://borderhealth.cr.usgs.gov/datalayers.html>.

<sup>8</sup> The number selected varied largely according to logistics: the number of team members available to work in that county, the costs of transportation and accommodation, etc. However, five randomly PPS selected colonias were selected **in each county**, and occasionally – as in Hidalgo County where so many colonias were found to be very small -- we did decide to group together a small number of colonias (often single streets or cul de sacs) that formed a single cluster (e.g. Welch Tract, Cotter Tract and Amigo Park see Figure 2.1), but where at least one of these fell into the PPS sample and were added-to by annexing adjacent small colonia neighborhoods. For the extrapolation, these **were** included among the colonias that were part on our sampling frame. In addition, several “new” subdivisions were purposively selected (for example in Hidalgo County, Seminole Valley 1 & 2, and Taurus Park Estates (see Figure 2.2) but these are not included in the extrapolations since they were not randomly selected.

<sup>9</sup> For details on our sources in compiling a pool of colonias from which to draw, please consult the Appendix A.i.





**Figure 2.7 Seminole Valley I & II. Example of a New Subdivision Selected as a Non-Random Selection Survey Site.**

### *Sample Size*

We first calculated for each county a population-adjusted sample size representative of the total colonias housing units in the county.<sup>11</sup> Next, we counted the number of housing units in each selected colonia using Google Earth™ images. This allowed us to view unoccupied (vacant) lots and achieve a better idea of the actual number of housing units and lots that were available as part of the sampling frame in each colonia. We then took our updated population for each colonia and distributed the total sample across the colonias selected in proportion to their respective populations. In this way, we arrived at a total number of housing units—which became the sample frame—to be interviewed in each selected colonia in order to achieve the ideal sample size numbers required for a small error margin (see Appendix A.i, Table 3).

### *Survey Creation*

During the second half of the Fall 2011 semester we prepared an English version of the questionnaire that we intended to use in the field starting in early January. Working off earlier surveys that we had used previously, we developed a protocol that we hoped would allow us to document details of land and property acquisition, deeds and papers received from the grantor (seller), alongside standard SES (socio economic statistical) data, and other property dimensions that interested us such as the proportion of owners with wills, formal and informal inheritance plans, previous experiences with property sales, and so on.

<sup>11</sup> See Appendix A.i, pp. 5-6, for the estimated sample sizes in each county.

As is often the case, construction of the survey instrument underwent numerous iterations, but our guiding concerns were threefold: 1) That it not be too onerous in length and time and be capable of completion inside 20 minutes; 2) That we focus upon the central core issue of property acquisition, papers used to document land sales, and titles; and 3) That the survey be capable of application primarily as a face-to-face survey by trained interviewers, but also amenable to being left at residences for mail-back in a prepaid envelope where no one was found at home after at least two visits. (Having prepared for the possibility of mail-back surveys, we later also decided to “paper” two large-scale new subdivisions [Drakes’ in El Paso and Pueblo de las Palmas and adjacent Salida del Sol in Hidalgo]; several hundred of the surveys were left on front doors or, where we encountered residents, with the request that people consider returning them to us by mail.)<sup>12</sup>

As part of the process of constructing the survey instruments, we consulted widely with colleagues with experience in colonia land transaction matters, and held a focus group with community organizers and experienced staff with Texas Rural Legal Aid in Hidalgo County, and also tested the terminology and clarity of the questions that we constructed. Finally, we created a Spanish version of the instrument and, on the advice of TRLA staff, we opted to use both the English terms for deeds and papers such as “Contract for Deed,” alongside “Contrato de Compraventa,” since it seemed more likely that these were the terms that would be understood and used locally and at the time of acquisition. Electronic PDFs of the questionnaires along with the letters of presentation (left with the respondent) and protocols explaining the voluntary nature of participation in the survey, its purpose, and assurances of confidentiality of the materials gathered (see introductory text to the survey) may be found at Appendix C.

Respondents were required to be an adult owner or spouse of the owner. Occasionally, where the owner was elderly, the survey could be completed by an adult child, but here too, the owner was usually present and would participate. The key criterion adopted was that the respondent should be familiar with the details of the lot acquisition process and titles held.

Not all lots were occupied by owners: some lots and housing units were rented or occupied by friends or kin of an absentee owner (around 22%). In these cases, we gathered introductory information on the questionnaire and then jumped ahead to a final section with questions specific to renters. These non-owner interviews went very quickly (5-8 minutes), since so many of the questions in the core of the instrument were skipped.

Given that Phases II and III involved human subjects, the research design, selection procedures, protocols, and instruments were submitted in December to the Institutional Review Board (IRB) and approved for use (IRB Protocol 2011-11-0126).

### *Interview Preparation*

As mentioned earlier, outreach to colonias’ advocates, residents, and service providers was conducted between November and January. Each county was assigned a designated outreach coordinator from our research team, who was charged with making contact with local advocates

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<sup>12</sup> In the final analysis, the mail-back strategy was not very successful. A 5-7% return is considered quite normal for mail-back surveys; ours was only 2%. Thus we felt vindicated in our decision to concentrate on face-to-face survey application.

and others in the nonprofit and government sector having relationships with colonias leaders.<sup>13</sup> Our goal was to garner support for the project and encourage participation in the survey. A Spanish and English flyer detailing the project was widely disseminated and posted prominently in the selected colonias (Appendix C). Additional pre-survey site visits were conducted in Starr, Cameron, Hidalgo, and Webb counties in order to enhance our familiarity with the areas and resident contacts.

### *Interviewer Training and Preparation*

The study was designed in anticipation that qualified University of Texas School of Law students, as part of their legal graduate training, would have the opportunity to participate pro bono as interviewers on the project. They would work alongside and be directed in the field by the LBJ and UT Law School faculty and by experienced graduate students from the LBJ School of Public Affairs, Sociology Department, Community and Regional Planning Program, and the Lozano Long Institute of Latin American Studies. In order to accommodate the Law School student participation, this meant that the first major period of surveying would need to be undertaken over one week in January before the semester began.

Between six and eight students were chosen in November to travel to each of five border counties<sup>14</sup> from January 7-13, 2012, through the UT School of Law Pro Bono Program.<sup>15</sup> Students were assigned to colonias to work in pairs with at least one Spanish speaker. Pairings were made based on students' Spanish-speaking abilities, gender, and their background in prior outreach and survey efforts. In total, more than 40 interviewers participated in the intensive round of surveying in January.

The UT faculty leaders held a two-hour training session in late November that introduced students to the history and current demographics of the colonias as well as the laws governing contracts for deed. They were also trained in presentation protocols and conducted role plays in order to familiarize themselves with the instrument (see "Training Document" in Appendix C). A second half-day training session was conducted in January to refresh students on the material, ensure their understanding of the survey, review the maps that they would use to locate each randomly-selected household, and go over accompanying instructions necessary to familiarize them with the dynamics of colonias outreach and surveying.

### *Lot Selection Logistics and Lot "Logs"*

For each colonia visited, we divided the total sample size by the estimated colonia population to calculate a sampling ratio. Surveyors were instructed to begin at a lot randomly selected by team leaders in advance, and to proceed systematically through the colonia or their designated segment and to "skip" houses in accordance with the sampling ratio for that settlement. The key assumption in random selection in a survey is that every housing unit should have an equal

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<sup>13</sup> Appendix F provides a list of key informants and other staff and officials who were approached for information and feedback.

<sup>14</sup> The first counties visited were Starr, Hidalgo, Webb, Cameron, and El Paso. Maverick county interviews were conducted in February 2012, and Guadalupe and Hays interviews in March and April, respectively.

<sup>15</sup> Information about the UT Law School Pro Bono Program can be found at: <http://www.utexas.edu/law/centers/publicinterest/probono/>.

opportunity (chance) of being included. Of course, not everyone will be present or available for the interview, and others will decline (we had a refusal rate of 8%). Interviewers were instructed that once they had successfully concluded a survey, then they would skip N lots/housing units (usually three), and **not** document the intervening lots. Only when the designated lot/site was unoccupied (defined as a vacant lot), the prospective interviewee was not home, or the individual was home but refused to participate, would the surveyor **annotate** that information on the lot log and go immediately next door to try there, and so on. A copy of a typical completed lot log is displayed at Appendix C.vi.

These lot logs became an important source of valuable information and an integral part of the survey process, and came to provide data about the number of visits made to particular housing units, the nature of the lots we visited (occupied or unoccupied/vacant), whether the selected informant had been located and, if so, their response. Latterly, as we became aware that a significant proportion of lots were vacant or contained house sites that had been abandoned we revised the lot log to annotate data about the nature of the vacant lot (e.g., house in construction, house abandoned, house locked up and not occupied, etc.). These data were subsequently incorporated into our Phase III analysis.

Each interviewer (if solo) or pair was responsible for submitting to the team leader in each county both their completed surveys and the hard copies of the lot logs, as well as an electronic version of the same that formed the basis of our survey returns database (see below). These data also allowed us ex-post to revisit the sample framework and to revise the sample weights and margins of error that would be used for the extrapolation (Appendix A.iv, Weights). Here is not the place to go into depth of what are largely statistical procedures, but they are fully documented at Appendix A.ii, pp 8-9.

Five counties were successfully surveyed in January. In February some 12 participants conducted interviews in Eagle Pass in Maverick County, and in March we conducted the survey in Guadalupe and Hays counties. The data for all eight counties we surveyed are included in the project database, which as we note at the end of this chapter is available in electronic form, albeit with all personal identifying marks removed.

### *Mail-Back Surveys*

As outlined earlier, the survey instrument was constructed in such a way as to allow us to leave mail-back questionnaires and cover letters in the hope that this might also offer a number of responses that would allow us to get close to our desired sample size in each county. Our protocol was that after attempting two visits for the selected housing unit, a mail-back survey would be left after a third attempt when we couldn't get a response. In addition, as discussed above, we "papered" with mail-back surveys all the occupied lots in two large subdivisions: Pueblo de las Palmas/ Salida del Sol in Hidalgo County and Drakes' Subdivision in El Paso County.

In the event the total response to the mail-back survey was relatively poor: just 2.5% of those that were delivered in the three large subdivisions where we did not sample but just distributed as many surveys as possible. A higher proportion of mail-back surveys were received (4%) from the sample-surveyed settlements (see Table 2.2 below).

## Post-Survey

In total, we polled (visited) over 6,000 lots in order to generate 1,215 completed face-to-face surveys. In addition we delivered almost 1,000 questionnaires for mail-backs in three new subdivisions (not shown in Table 2.2). While the response rate was low for mail-backs (see above), when we found an eligible respondent at home for the face-to-face surveys, we received a reasonably good response rate, with 77% agreeing to be interviewed.

**Table 2.1. Colonias and Informal Homestead Subdivisions Selected for Survey in Each County**

County	Names of Colonias
Hidalgo	<i>Amigo Park, Welch Tract, Cotter Tract, , Heidelberg, Capisallo Heights, Indian Hills West, Indian Hills East, Hidalgo Park Estates, Owassa, Seminole Valley, Seminole Valley 2, Taurus Estates 1</i>
El Paso	<i>Las Casitas 1, Las Casitas 2, Las Casitas 3, Mayfair 1, Mayfair 2, Mayfair 3, Mayfair 4, Mayfair 5, Deerfield 1, Deerfield 2, Deerfield 3, Tornillo</i>
Cameron	<i>Bluetown, Santa Maria, Santa Maria North, Iglesia Antigua, Iglesia Vieja, Olmito, Combes, Aloe Vera, Rosal, Munoz, Shelley</i>
Starr	<i>Guerra, Trevinos, Trevinos 1, Doyno West Side 2, Olivarez, Los Olmos, Garza-Salinas, Share 52, North Santa Cruz, East Alto Bonito</i>
Webb	<i>El Cenizo 1-5, La Presa, Larga Vista, Los Altos, Pueblo Nuevo, San Carlos, San Carlos 2</i>
Maverick	<i>Deer Run 2, Deer Run 4, Deer Run 5, Las Quintas Fronterizas, Chula Vista School Block, Chula Vista 1-5, Loma Linda 1</i>
Guadalupe	<i>Country Acres, Park at Creekside, Birmensdorf, Brookhollow Estates</i>
Hays	<i>Railyard, Green Pastures</i>

**Table 2.2: Survey Returns by County**

County	# Subdivisions Surveyed	# Lots Visited	# Vacant Lots	# Face-to Face Interviews Completed	# Declines	# Mail Interviews Deposited	# Mail backs Received
Hidalgo	12	874	125	212	27	205	16
El Paso	12	695	72	172	15	357	19
Cameron	11	845	218	184	64	156	3
Starr	10	1,074	263	131	69	335	8
Webb	7	769	135	180	28	142	2
Maverick	7	1,078	327	178	84	74	0
Guadalupe	4	384	43	82	46	0	n/a
Hays	2	369	91	76	28	0	n/a
Unidentified							4
<b>Total</b>		<b>6,088</b>	<b>1,274</b>	<b>1,215</b>	<b>361</b>	<b>1,269</b>	<b>52</b>

Once we had completed our surveys, it became apparent that we had obtained fewer completed questionnaires than needed to meet our original margins of error (Appendix A.i). However, one of the advantages of using a probabilistic sampling approach is that post-sample weights may

be used to make adjustments for non-response rates, unknown eligibility, and the impact of variances (see Appendix A.iv for the amended weights). Nevertheless, the margin of error increased somewhat for our extrapolations to the county level from an originally anticipated  $\pm 5$  to between  $\pm 6.82$  (Webb) and  $\pm 8.61$  (Cameron).

After the survey questionnaires were received, they were coded (see Appendix C.v for a copy of the Coding Guide), and the normal checks and “cleaning” of data records was undertaken (March through April). Only then could we embark on the data analyses that underpin Chapters Four and Five of the Report. For the purposes of independent verification that is widely expected in contemporary social science research, we are pleased to make available an electronic copy of this database in EXCEL and SPSS (with all personal identifying marks removed [names, addresses, property IDs, etc.]). This e-database for the project is available on CD Rom and on a server at [www.lahn.utexas.org](http://www.lahn.utexas.org) (in the TDHCA Report folder under the “Texas Housing Studies” section of the website). This Report, the Appendices, and all other documentation are also at that location.

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## **Chapter 3. The Changing Practice of Recorded Contracts for Deed in Texas Border Counties and in Central Texas**

In this chapter we examine the use of recorded Contract for Deed (CFD) as a mechanism for real property conveyance (i.e., land and improvements) in several border counties of Texas as well as several Central Texas counties, for a total of 10 counties. Our counties of focus in this phase of research were: Cameron, El Paso, Hidalgo, Maverick, Starr, Val Verde, and Webb (border counties); and Bastrop, Guadalupe, and Travis (interior counties).

While many recorded CFDs are likely to be in colonias and low income subdivisions, they are not exclusive to those neighborhoods. The varying nature of CFDs as well as other types of deed was described earlier in Chapter 2, as was the legislation enacted in 1995 and in 2001 to regulate the use of CFDs. Our primary goal in examining the use of Contract for Deed was to obtain a “hard count” of the number of recorded CFDs for the specified counties starting, where possible, in 1989. Not all CFDs are recorded in the county deed records, and so in the following chapter we seek to arrive at estimates of unrecorded CFDs.

This chapter focuses upon Phase 1 of our title research: a hard count of Contracts for Deed that were recorded in the counties we studied. We begin by outlining the most important steps of our methodology used to quantify the number of recorded CFDs. Details of the different CFD classifications we adopted along with the specific steps we took in each county we studied can be found in the county narratives in Appendix Aii. The status and steps of data collection and the sampling frames used in each county are provided in a Table at Appendix A.iii. **Readers wanting to jump straight to our key research findings should go to the Recorded Contracts for Deed Results Section in this chapter, beginning on page 8.**

### **THE METHODOLOGY AND STRATEGIES TO DETERMINE RECORDED CONTRACTS FOR DEED**

We went into this project thinking it would be fairly straightforward to have reports run from the deed records in each of the counties we studied quantifying the number of contracts for deed that had been recorded in each of the counties. However, this proved to be a much more daunting task because each of the counties in our dataset has a different system for classifying contracts of deed and other real property transactions in its deed records. Not everyone in charge of categorizing deed records—whether employed in title companies (TCs), central appraisal districts (CADs), or county clerks’ offices (CCs)—agrees about what qualifies as a contract for deed or with how to categorize them as such in the deed records (See Appendix A.ii). Some of the entities do not distinguish between various kinds of land contracts when assigning them a category. Others have separate categories for “Contracts for Deed,” “Contracts for Sale,” and straightforward “Contracts,” but the staff assigned the task of categorizing these recordings could rarely explain to us the differences in meaning behind these labels. We often found contracts for deed categorized amongst multiple categories in a single county’s deed records.<sup>1</sup> In addition, we found that many categories containing contracts for deed also included other types of land transaction documents. In many instances, we also found that the categorization systems had changed over time or had been applied inconsistently. In some cases, this problem was exacerbated by changes made to databases or software that caused details about documents to be lost.

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<sup>1</sup> For details on these categories, please consult the county narratives in Appendix Aii.

### *What Qualifies As A Contract For Deed?*

To deal with these issues, our research team first created a project-specific definition of what counts as a contract for deed so that our researchers were applying the same definition across counties as we reviewed thousands of contracts. When examining a contract, we first looked at the title of the document. We included all contracts that were titled as “contract for deed,” “lease to own” and “rent to own.” If the title was missing or ambiguous (e.g., “contract of sale”), we labeled the document as a contract for deed if it fulfilled the following criteria:

1. Operated to **sell** from one party to another party a piece of **real property**;
2. Involved a **series of payments** over the course of **at least one year**; and
3. **Withheld** the transfer of **title** until payments due under the contract were made.

In other words, we excluded those contracts involving personal property such as the sale of a manufactured home that was not legally attached (versus physically attached) to the land as real property. We excluded those contracts with only one or two payments required within the course of a year before the transfer of title. We did not require that an express “forfeiture clause” be present in the document. We included rent-to-own contracts if they met our three definitional elements.<sup>2</sup>

The formality of the recorded contracts for deed we encountered was wide ranging. Many of the contracts we included were titled “Contract for Sale” or “Contract” or “Agreement.” Some had no heading at all and contained very cursory language regarding the rights and obligations of the parties to the contract. Where a recorded letter or form that “memorialized” an unrecorded contract for deed appeared in our sampling, we counted the letter and form as a recording of a contract for deed. Several examples of the documents that we encountered and classified as contracts for deed appear in Appendix F.

### *How Many Recorded Contracts for Deed are There?*

In September 2011, we sent written requests for data to the Office of the County Clerk (CC) and the Central Appraisal District (CAD) within each county in our study. The data request asked for reports containing the number of contracts for deed recorded in each county for each year from 1989 through 2010.

Although many of the classic colonias were platted in the 1970s and 1980s and many households started to acquire lots from the early 1980s onwards, we set 1989 as our start date since this was the year in which public awareness began to emerge about border colonias and represents the initial phase of governmental (federal and state) interventions to tackle the physical and social needs in such neighborhoods (Ward 1999). The cutoff year was 2011, although 2010 is the final full year of record since we were gathering the recorded CFD data in Fall 2011, such that records for that year were incomplete and are not included in the Tables or Figures in Appendix E.i, nor in the discussion that follows.

The data requests to the CCs and CADs were followed by phone calls to different personnel within these offices. We also requested assistance from several title companies with offices in

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<sup>2</sup> Under the Texas Property Code, Section 5.062 (b), a rent-to-own real estate contract is considered to be a contract for deed for purposes of Chapter 5 of the Property Code, which includes the central consumer protections for persons buying residential real property under contract for deed. The Property Code refers to contracts for deed as “executory contracts.”

Central and South Texas. We were able to obtain their assistance in multiple, but not all, the counties of study. The datasets we obtained from each source are noted in Appendix A.iii, which provides a Table that summarizes the specific steps taken in each county to reach the recorded contract for deed count.<sup>3</sup>

Unfortunately, the scarcity of accessible data on the number of recorded contracts for deed forced us to accept data from wherever it could be found. Given the difficulty in accessing information on recorded contracts for deed from the county clerks' deed records, we could not report solely from this dataset. An important source of information on contracts for deed turned out to be the central appraisal districts, most of which were able to provide much more accessible information on recorded real property transactions than the county clerk offices. However, the country appraisal district records did not always differentiate between whether contracts for deed had been recorded. For the purposes of our research, we assumed they had been recorded, because most CAD offices as a matter of practice rely on deed records from the county clerks.

### *Verification*

In order to allow us to estimate the number of contracts for deed recorded in each county in our study, we asked each county for a list of categories the county had used or may have used in the past to categorize contracts for deed, along with the number of documents that had been recorded within each category. Unfortunately, we were unable to rely on these hard counts, given that many of these categories turned out to not include contracts for deed or contained a wide range of documents that, upon further investigation, were not contracts for deed. For example, we found that some counties classified some contracts for deed in the deed records as "contracts" but that this category included a large number of other types of documents that were not CFDs. Moreover, some counties have used a shifting and wide-ranging set of classifications for contracts for deed recorded during the time period of our study (1989-2010) and were unable to tell us with certainty which categories were used to classify contracts for deed.

As a result of the ambiguities in the classification systems used by county clerks' offices, we had a researcher begin in each county by conducting a "verification check" to confirm that contracts for deed were present in each of the numerous classification categories identified by county personnel as potentially containing contracts for deed. Given the extremely large number of records involved, the verification check was usually done by examining 10% of the contracts in each such "suspect" category, either onsite or by obtaining a PDF of those contracts. We made every effort to examine one in every ten of these contracts, pulled from a chronological roster, to ensure that the contracts examined were dispersed proportionally across the years in which they were filed. Where this was not possible, we note so in the detailed county-by-county narratives in Appendix Aii. Sometimes where a category was found to contain more than 1,000 contracts we conducted a one percent sampling instead of ten percent—also noted in the Appendices Aii and Aiii. Finally, we used common sense in confirming the presence or absence of contracts for deed in a particular suspect category. If we looked at the recordings in a category and found them to be uniformly something that obviously did not qualify as a recorded contract, we did not complete our sampling of that category but set it aside as a non-CFD. And, conversely, where we found a category to contain *only* contracts for deed following a

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<sup>3</sup> As noted above, the details of the application of our methodology in each county are provided in the narratives at Appendix Aii.

reasonable degree of sampling, we suspended sampling and counted all recordings in the category as contracts for deed.

The circumstances on which we relied in making these kinds of contextual decisions included, but were not limited to, the level of experience of, and our confidence in, the particular county employee offering us direction. Where we experienced a very high level of certainty about a particular category containing only contracts for deed, we would sometimes move to a sampling of only two contracts per year, primarily to check that the categorization system had not gone through any dramatic changes over time. In such a case, a “bulge” or sudden presence of a higher number of documents in a particular year for a given category that we had already confirmed to be a contract for deed category would cause us to increase our sampling for that category to determine whether the apparent flood of new contracts for deed was the result of other types of documents being re-classified into that category.

To obtain estimates of the numbers of contracts for deed recorded by year, we used different techniques in different counties, depending on the number of recorded documents in each category and the accessibility of the data in that county. For example, in some counties the number of documents in the categories used to classify contracts for deed was small enough that we were able to view every contract for deed; and in these counties our year-on-year figures are precise, because we could see the year of recording for each document. In counties where we sampled one in ten contracts, we were usually able to sample a sufficient number within any given year to estimate what fraction of each year’s recordings in the category were contracts for deed. However, in some counties where the number of documents was so large that we viewed only 1 out of every 100 contracts, sampling within every given year in order to predict the rate of prevalence for each year was more difficult, and these cases are noted in our analysis (Appendix E.i.).

#### *Veterans’ Land Board Contracts*

Early in our research, we were interested to find that a number of the contracts for deed were issued by the Veterans’ Land Board (VLB) rather than by traditional developers, so much so that we identified the cases and numbers of recorded contracts for deed that involved the VLB. These are broken out separately in our analysis. In some counties (again, where numbers were small enough for us to view every contract for deed) we were able to do so with precision. In others, where we viewed only one in ten contracts for deed, we were still able to count the numbers of VLB contracts more precisely by doing a separate party name search in the deed records. However, in certain counties in which the names of the parties to the contracts for deed was not made available to us, or where we were able to sample only one percent of the contracts, the numbers sampled by year did not give us enough information to be able to estimate the proportion of contracts for deed involving the VLB on an annual basis. In such cases, we so note. The Veteran’s’ Land Board reported to us that they stopped using contracts for deed in December 2007, and since then has just been selling land through a traditional deed and deed of trust.

#### *How Many Contracts Remain?*

No county was able to tell us which contracts for deed recorded were still active in the deed records or had been supplanted by a deed or another recorded contract for deed. Even in those counties in which a specific number of contracts for deed could be quantified as having been the last recorded transaction for a particular property, this kind of a tally was under-inclusive because it failed to include recorded contracts for deed that were still active but for which a

subsequent document not operating to change ownership was the last recorded transaction, such as a lien. We lacked the resources to conduct the kind of comprehensive title history that would be necessary for determining the current status of the thousands of contracts for deed contained in the deed records. Therefore, to arrive at estimates of what we came to call “current contracts for deed,” our team used a number of different methods, depending on the circumstances in that particular county, described below.

### *Approximating Title Histories in Order to Identify Current CFDs*

In those counties where the number of recorded contracts for deed was relatively small, we were able to go onsite to the county clerk’s office and conduct title history searches for each contract for deed, although the deed searches were imprecise (and thus our counts likely over-inclusive), given the antiquated systems used to track deed histories in Texas. In the deed records kept by some Texas counties, records are not searchable by the legal description of the property. In other words, one cannot simply enter the legal description in the county’s computer system and have a pop-up list of land transactions recorded using that legal description. Instead, the offices we visited generally utilized a grantor-grantee system whereby one must search by the name of the grantor or grantee to track down the history of land transactions for a particular parcel. Moreover, we found that the sophistication of the software systems utilized by the counties varies widely; in some counties this greatly frustrated our attempts to research the title histories.

To determine whether a recorded contract for deed was still active and had not been supplanted by another contract for deed, a deed, or a rescission of the contract, we therefore had to rely primarily on a grantor-grantee search in the county clerk records. This type of search is quite difficult and very time consuming to conduct given that the grantor’s and grantee’s names are often similar or identical to other parties’ names on transactions involving other lots, or their names have changed since the contract for deed was recorded (e.g., through marriage or divorce).

We typically started our title history searches by looking in the clerk’s computer system to see if the buyer’s or seller’s names appeared in a subsequent transaction involving a warranty deed or other type of deed. Where no subsequent deed was identified, we also attempted to search by the buyer’s name to look for subsequent assignments. In many cases, the trail would run cold and we were unable to find a cancellation, assignment,<sup>4</sup> or deed in the name of the original buyer or subsequent assignee, or other indication of the contract’s termination. In such cases, we coded the contract as “**active**.”

An additional difficulty was that, in some counties, property search capabilities were present but extremely ineffective due to the different ways in which legal descriptions or physical addresses had been entered into the databases. Elsewhere, we encountered a particularly ineffective name search engine where we found that using a common last name to locate specific buyers was very difficult, if not impossible. Finally, it goes without saying that we lacked the ability to identify when a particular contract for deed had been cancelled by the parties without a recording. In each of these ways, our system was biased towards miscoding discontinued

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<sup>4</sup> An assignment without more was treated as an outstanding contract for deed. Where a particular buyer’s contract for deed had been cancelled or replaced with a second contract for deed between the original seller and a new buyer, we coded the original contract for deed as inactive. The second contract, if it was pulled in our random sampling, would be coded as outstanding (i.e., current). Multiple contracts for deed for the same parcel were kept in the pool from which samples were drawn.

contracts as active.

In some circumstances, where the number of active contracts for deed was particularly high and we thus lacked resources to conduct a title search for every contract, we again relied on a ten percent sample to derive a **current prevalence rate**. In other cases, where we lacked the resources for travel to research the county clerk records onsite, we relied on the “last three recorded transactions” information available through some County Appraisal District (CAD) websites. However, this method also created the possibility of a miscoding in any cases where the last three CAD-reported transactions did not involve a change of ownership, presenting a possibility that a deed or new contract for deed had been recorded prior to the CAD-reported transactions. Although, based on the CAD records we reviewed, this is likely a very small subset of cases.

Note that our analysis of active contracts for deed was based on an examination of CFDs recorded post-1989. Any contracts for deed that were recorded prior to 1989 were not included in our estimates. Given that contracts for deed were not required to be recorded at that time, and given the passage of 23 years between 1989 and 2011, we would expect that the number of recorded contracts for deed that are still active from pre-1989 would be quite small. However, in this way, our system was biased towards undercounting active contracts for deed.

### *Timing*

In each county, data came in at different times from different members of the team working with different programs (on-line or in person to county offices), often with later-amended datasets. For this reason, our team could not be precise about the cut-off dates for current contracts for deed in 2011, and, as mentioned above, we took 2010 as our last complete year of record.

A second cautionary note about timing involves the date of recording. Some counties keep track of both the recording date and the date that the instrument was signed or made effective; while others do not, but just keep track of the recording date. Because we wanted to compare counties using data that was as consistent as possible, we chose to categorize the documents by the recording date only. However, we saw many contracts that had recording dates years after their signing dates, particularly in the early years of the study period. Therefore, we caution against the assumption that the contracts for deed we report as having been recorded in a given year were actually entered into in that same year.

### *Putting the Use of CFDs into Perspective: Usage Rates*

It became apparent early on in our team meetings that while information about the total numbers of recorded land transactions in each county by year was important and central to our report to the TDHCA, it was also important to relate this usage to the total number of property transactions in each county, and as proportion of the total number of household units known to live in colonias in each county. Thus we sought to calculate the relative rate of usage of a contract for deed as a vehicle of land acquisition within a given geographical area. For this reason, we created two categories for each county, in some cases by year: “Transaction Usage Rate” and “Household Unit Usage Rate.”

#### Usage Rate per 1000 transactions across each county.

The **Transaction Usage Rate** represents the number of contracts for deed recorded in a given period divided by the sum of all recordings from land sales that *were in fact transacted or could*

*have been transacted* using contracts for deed versus a deed or other land titling mechanism. Included in our “transactional denominators” are warranty deeds, warranty deeds with vendor’s liens, special warranty deeds, and the like. We excluded certain recorded transactions (such as executors’ deeds or sheriff’s deeds, for example) in which the seller would not commonly be confronted with the choice between the use of a contract for deed and the use of a traditional form of deed. We then multiplied the total by a factor of one thousand to allow for more easy reading. Thus, in this report, a “Transaction Usage Rate” of “2” means that, within a given period of time, 2 of every 1000 similar land sale transactions involved a recorded contract for deed.

We discuss the details of what we included in the denominator categories in each county narrative. The typologies utilized by the counties in categorizing the different land transactions are also different: both because the size of each county’s colonias and non-colonias population varies widely, and because the land transaction patterns in each county also vary tremendously across counties. Thus we caution against comparing the Transaction Usage Rates across counties. The Transaction Usage Rates are a better indicator of what has happened in a given county over time, particularly in periods where the county had not changed its typology for categorizing land transactions.

Finally, for those counties in which the number of recorded contracts for deed was particularly small in comparison to the overall transaction rates, the Transaction Usage Rates were not calculated by year. In these counties, minor changes in the already-small recorded contract for deed rate were dwarfed by huge fluctuations in overall transaction rates.

#### Usage rates per 1000 household units across colonias in each county

A better cross-county comparator of the relative importance of contracts for deed is the total number of recorded contracts for deed expressed as a fraction of: (1) the number of household units in 2010 in the county’s colonias, in the case of border counties; and (2) the number of household units in 2005 in a county’s informal homestead subdivisions (similar to colonias, see Chapter 2), in the case of interior counties. Because these rates are not adjusted for fluctuations in population over time, they can only allow for a rough comparison of the relative importance of recorded contracts for deed across counties with very different colonias populations. It is important to remember that we relied upon different sources of information to come to these household unit estimates depending on whether the county was on the border or in the interior.<sup>5</sup> To do this, we took the number of contracts for deed recorded in a county in a given year and divided by the number of colonia housing units in the county,<sup>6</sup> and then multiplied by a factor of 1000. Roughly speaking, a **Household Unit Usage Rate** of “15” indicates that, for the year considered, 15 contracts for deed were recorded for every 1000 housing units in that county’s colonias.

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<sup>5</sup> For more information on how we created these estimates, please consult our Full Methodology Appendix, A.i.

<sup>6</sup> Our estimation of the populations in the border county colonias is set forth in more detail in the section on Survey Methodology in Chapter 2, and in Appendix A.i (Full Methodology). Populations in the informal homestead subdivisions in Guadalupe and Hays counties were estimated using the 2010 Census estimates of the numbers of household units in Census Defined Places, available at <http://www.gpo.gov/fdsys/pkg/FR-2007-04-06/pdf/E7-6465.pdf>.

## RECORDED CONTRACTS FOR DEED: RESULTS

Several key and informative findings emerged from our study of recorded contracts for deed in the 10 counties we examined:

- ❖ **While recorded CFD usage has declined considerably over the years, recorded CFDs remain an active mechanism of conveyance.** The annual rate of CFD recordings across all 10 counties combined has leveled out at approximately 450 for 2010. However, we observed a recent upswing in Bastrop and El Paso counties. See Figure 3.2.
- ❖ **Over the past 21 years, recorded CFDs have been widely used in border as well as interior counties.** We estimate that **16,261** total recorded contracts for deed were recorded from 1989 through 2010 in the 10 counties studied (including Veterans Land Board transactions in 7 counties for which we have recorded VLB information). See Table 3.1. As one might expect, border counties with larger colonia populations had the largest absolute numbers of recorded CFDs. See Table 3.1.
- ❖ **An estimated 5,451 recorded CFDs are still active in the 10 counties we studied.** See Table 3.1. Most of the active recorded CFDs are in five counties: Bastrop, Travis, Webb, and Maverick counties. The fewest outstanding contracts are in Starr, Guadalupe, and Val Verde counties.
- ❖ **Overall, across the 10 counties, the number of CFDs recorded annually began to rise in 1995 from approximately 620 CFDs to a peak in 2000-01 of 1,226 CFDs.** Starting in 2001, around the same time of the legislative reforms to CFDs, usage rates sharply declined across the board, marking a downward trend that continued (with some aberrations) throughout the end of the decade. See Figure 3.3.
- ❖ **The highest Housing Unit Usage Rates seen throughout the study period are in Maverick, Webb, and Bastrop counties.** In other words, these counties have the highest use of recorded CFD per colonia household unit (an average across all years studied of 29 recorded CFDs per 1,000 colonia household units in Webb). The lowest average Housing Unit Usage Rates are in Starr,<sup>7</sup> Travis, Val Verde, and El Paso counties. See Figure 3.1.
- ❖ **On average, the highest Transaction Usage Rates seen throughout the study period are in Maverick, Hidalgo, and Bastrop counties.** The lowest average Transaction Usage Rates are in Travis, Guadalupe, El Paso, and Cameron counties (fewer than 10 per 1,000 transactions). Transaction Usage Rates are generally higher in counties where colonias and Informal Homestead Subdivisions form a high proportion of the residential fabric. See Table 3.1.

The consolidated results of recorded Contracts for Deed by county are shown below. A year-on-year analysis of the data for each county, along with various usage graphs, are displayed at Appendix E.i and as an electronic file in the on-line and CD Rom versions of the Report and Appendices, to enable independent verification and analysis. The precise details of how these

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<sup>7</sup> The Starr County rate likely reflects the poor level of recordkeeping in that county.

results were obtained for each county appear in Appendix A.ii.

County	Total Recorded CFD 1989-2010	VLB CFD 1989-2010 <sup>8</sup>	Estimated Active Recorded CFD <sup>9</sup>	Transaction Usage Rate per 1000 Transactions <sup>10</sup>	Housing Unit Usage Rates Average <sup>11</sup>
Bastrop	1,823	533	739	23	19.2
Cameron	1,772	113	409	7	6.9
El Paso	1,264	36	678	3	4.2
Guadalupe	888	423*	280	9	9.2
Hidalgo	3,390	185*	600	7	5.9
Maverick	2,366	10	926	76	19.8
Starr	374	7	149	12	2.1
Travis	1,564	227	772	2	4.2
Val Verde	376	224*	105	17	4.4
Webb	2,444	7*	793	N/A	28.8
<b>TOTALS</b>	<b>16,261</b>	<b>1,765</b>	<b>5,451<sup>12</sup></b>		
*are estimates					

**Table 3.1 Consolidated Numbers and Usage Rates of Recorded CFD by County**

<sup>8</sup> These Veterans' Land Board contracts are included in the total number of contracts for deed reported in the preceding column. Please consult the county narratives in Appendix A.ii for details on the method used in each county to arrive at VLB counts. In some cases, we did actual counts of VLB contracts for deed we found in the deed records using a name search. In others, we used estimation. In still others, we were unable satisfactorily to conduct count or estimations; in these counties we report only raw counts of those VLB contracts we found in the process of sampling categories of recorded documents containing contracts for deed. As we discuss further in Appendix A.ii. the VLB count for Hidalgo County is likely an undercount.

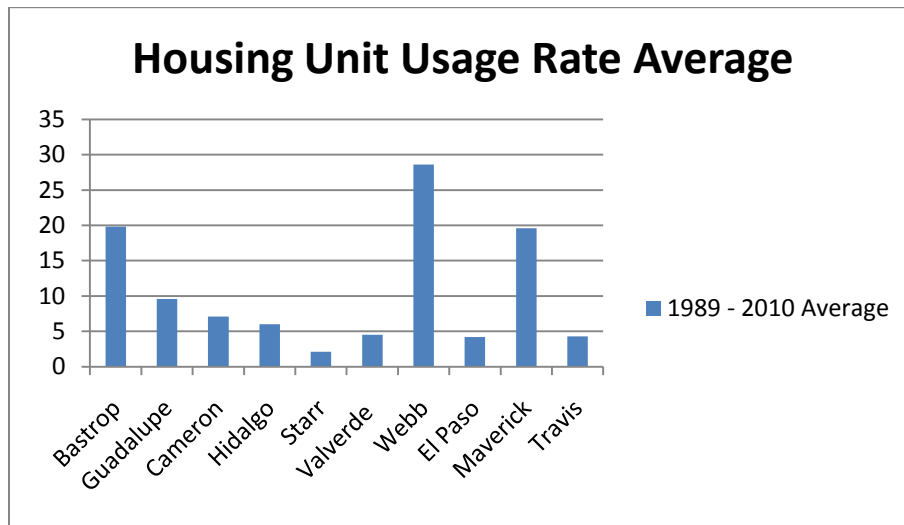
<sup>9</sup> See the discussion in Appendix A.ii for how we arrived at these estimates of active recorded CFDs. As the appendix discusses, we believe this estimate for Webb County is likely an undercount.

<sup>10</sup> Transaction Usage Rates, as explained above, were computed by taking the total number of contracts for deed filed over a period in a particular county and dividing by the total number of recorded land transactions in the same period that involved a contract for deed or instrument conveying ownership in a similar transaction involving the sale of land. We multiplied these figures by 1000. For details on which transaction types were included in these denominators, please consult the individual county narratives in Appendix A.ii, as counties differ in their categorizations of deeds.

<sup>11</sup> Housing Unit Usage Rates were computed by taking the total number of contracts for deed filed within a period in a particular county and dividing by the estimated total number of housing units in the colonias or informal subdivisions located within that county. For border counties, we used the methods described in the Methodology Appendix to estimate the number of household units. We multiplied these figures by 1000. For interior counties, we relied upon the 2010 Census estimates of the numbers of household units in Census Defined Places (CDPs). The definition of CDPs appears at <http://www.gpo.gov/fdsys/pkg/FR-2007-04-06/pdf/E7-6465.pdf>.

<sup>12</sup> The vast majority of these are outstanding **non**-Veterans' Land Board Recorded CFDs.

**Figure 3.1 Average Housing Unit Usage Rate for Recorded CFDs in Colonias by County, 1989-2010**



#### *Changing Trends in the Use of Recorded Contracts for Deed*

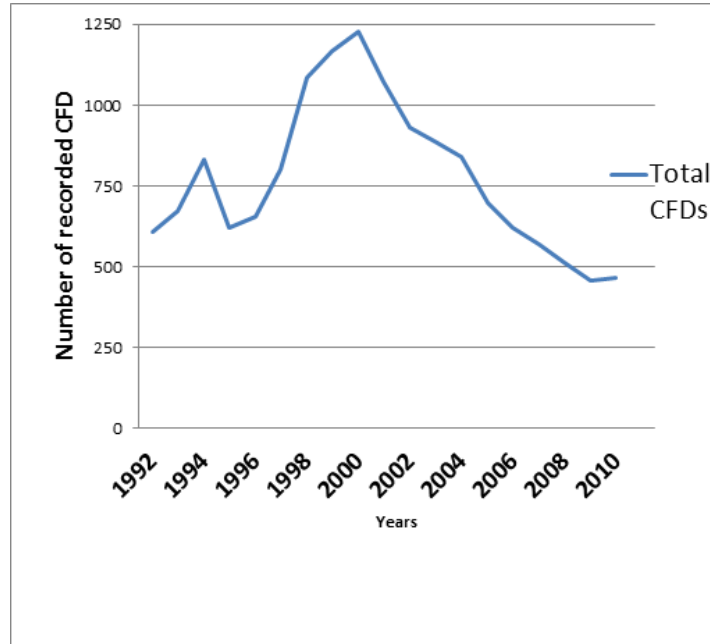
We were interested in assessing the impact of the state legislation enacted in 1995 (in border counties) and in 2001 (elsewhere) to regulate the use of Contract for Deed and provide consumers with a range of protections. It is important to note that the legislation did not prohibit the use of CFD as a mechanism for seller financing of land and property sales, but it was designed to ensure that issuers of contract for deed (developers especially) were less exploitative in their use of CFD. One of the requirements of the legislative reforms was that sellers were obliged to record contracts for deed in the county deed records.<sup>13</sup> This recording requirement was enacted in 1995 for border counties and extended to the rest of the state in 2001.

As a result of these legislative changes, we anticipated seeing a bump up in recordings of contract for deed following the 1995 recording requirements for the border counties, and the 2001 recording requirements for the interior counties. We also anticipated that the restrictions enacted in the new legislation, especially the 2005 reforms, would reduce over the past six years the extent to which CFDs were the conveyance mechanism of choice in colonias and Informal Homestead Subdivisions, and that many developers would start opting for other forms of seller financing such as deeds with vendor's liens.

Thus, in addition to calculating the total usage of CFDs over time as Figure 3.1, we were also interested in monitoring the year-on-year changes in usage, as well as the number of CFDs that appeared to be still current (described above and in Table 3.1). This would allow us to ascertain whether CFDs were largely a thing of the past and, if not, where they remain extant. Year-on-year data is presented for each county in Appendix E.i along with graphs of the same. Below, we display two graphs: the first presents the overall trend in usage by year; the second presents the usage trend by year for each county.

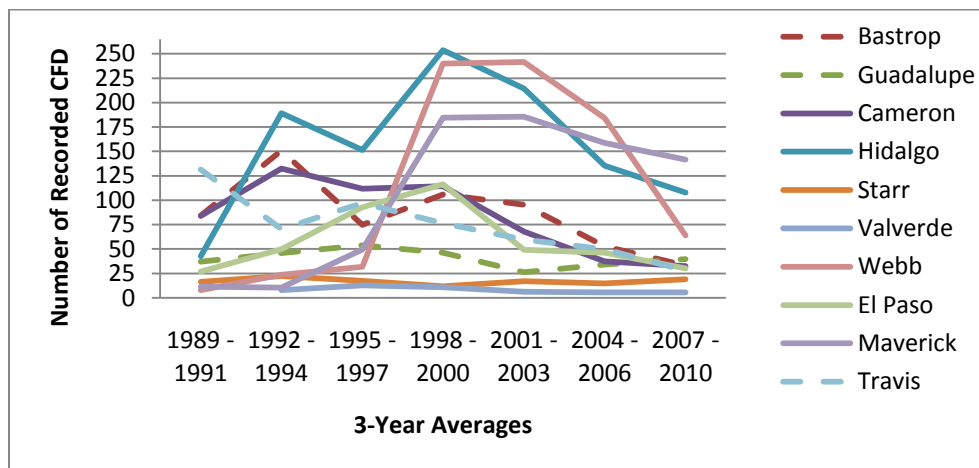
<sup>13</sup> Texas Property Code, §5.076.

**Figure 3.2 Total Number of Recorded Contracts for Deed 1989-2010  
(3-year running mean)**



As one can observe in Figure 3.2, the overall number of recorded CFDs increased through the 1990s, peaking around 2000, and then declining in the following ten years. However it remains in active use in many border counties. Note that these are recorded CFDs only; in the following chapter we will explore the extent and nature of unrecorded CFDs. Not included here is the data on recorded CFD usage by the Veterans Land Board, which also show a decline in use, and which virtually petered out in use by 2007-09 (see Appendix E.i.).

**Figure 3.3 Three-Year Running Mean, Recorded Contracts for Deed by County  
1989-2010<sup>14</sup>**



<sup>14</sup> As discussed further Appendix A.ii., the totals for Cameron and Webb counties are likely undercounts.

**Figure 3.4 Annual Recorded Contracts for Deed by County  
1989-2010**

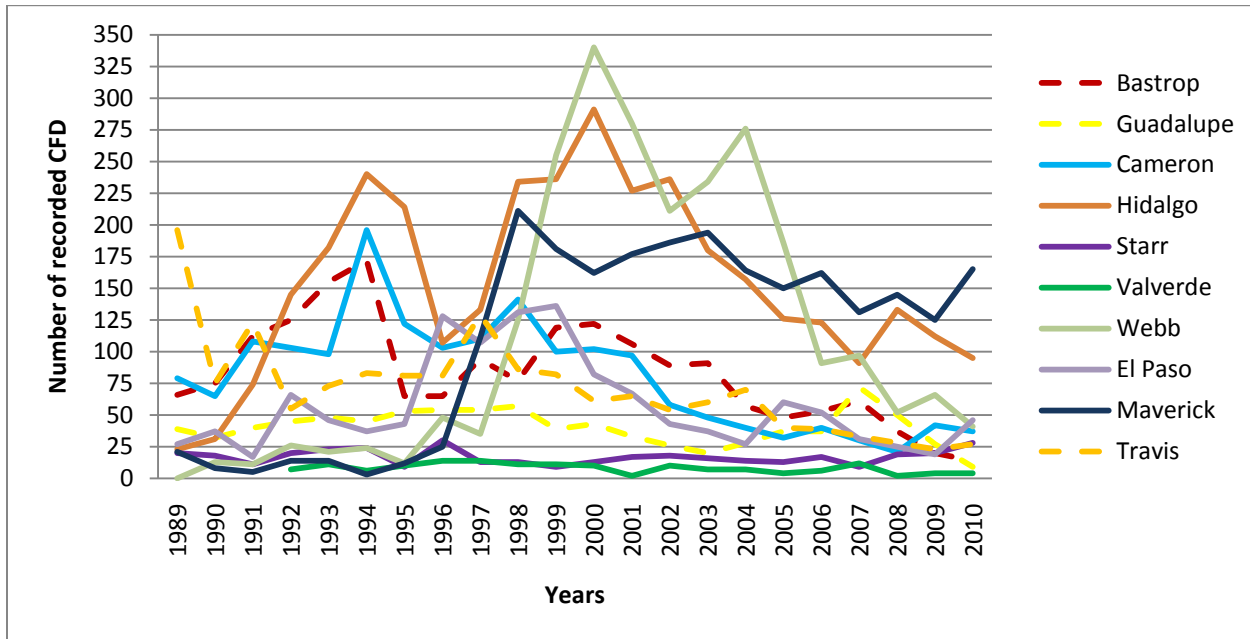


Figure 3.3 offers a three-year running average of recorded CFDs for each county from 1989-2010 and is displayed here to allow the reader to view the overall trends more easily than the year-on-year changes that appear in Figure 3.4. While the trends vary in each county, there is a general trend of an increase in the number of recorded CFDs in the early 1990s, which is accentuated after the 1995 contract for deed legislation kicked in for the border counties (with a brief hiatus in Hidalgo in 1996, after which Hidalgo begins a sharp upward curve in 1998, spiking in 2000). Since 2000/2001, almost all counties in our study have seen a decrease in the number of recorded CFDs.

In Maverick County, the use of CFDs remains high (Figure 3.4 upper blue line). In Webb, the high rates and spike in recorded CFDs starting around 1998 are likely due in part to major conversion programs (from CFD to Warranty Deed) undertaken by nonprofit organizations in two very large colonias (El Cenizo and Rio Bravo) as well as a new classification system used by Webb County in the early 2000s, whereby the County stopped its practice of removing from its categorization of recorded CFDs those CFDs for which a subsequent conversion to a deed or cancellation occurred (see Appendix A.ii. and the discussion there of Webb County). Somewhat to our surprise for a border county, Starr County data shows a low number of recorded CFDs and a pretty constant low Housing Unit Usage Rate, but this probably reflects the poor level of recordkeeping and the prevalence of unrecorded CFDs in that county.

*CFDs as a Route to Successful Home Ownership and Final Deeds*

Recorded CFD to Deed Track Record in Maverick County

Although it falls somewhat beyond the scope of our project, during the study we became interested in trying to gauge the extent to which those homeowners who purchased under a recorded CFD were ultimately successful in concluding their purchase and obtaining a recorded deed. We were only able to pursue this analysis with reliability in Maverick County, where CFDs

were both significant and ongoing (see Figure 3.4), because, thanks to the pro bono efforts of Stewart Title Company, we were able to acquire title histories for a 10% sample of all recorded CFDs in that county.<sup>15</sup>

Subsequent Transaction	Number	Percentage of Those Reviewed
Deed	42	18%
Outstanding CFD	89	37%
Express Cancellation <sup>16</sup>	101	42%
Implied Cancellation	7	3%
Total	239	100%

**Table 3.2. The Final Outcome of Recorded CFDs: The Case of Maverick County<sup>17</sup>**

Table 3.2 shows the transaction status for 239 cases of recorded Contracts for Deed in Maverick County. The Table shows how many of the 239 Contracts for Deed that were recorded between 1989 and 2011 were then followed by a deed, an express cancellation, or implied cancellation of the Contract, or whether the Contract for Deed, according to the title history, is still outstanding. Cancellations (expressly documented or implied from the title history) comprise 45% of the cases, which suggests that close to half of those purchasing a lot through Contract for Deed in Maverick County end up never completing the purchase and obtaining the deed, and thereby forfeit any equity they have in the property. **Fewer than one-fifth of Maverick County buyers with recorded CFDs in the 1989 to 2011 timeframe have made the transition to a deed.** Moreover, based on the title histories reviewed, 37% still hold an active CFD.

The rate by which Maverick County homebuyers have lost their lots through the cancellation of their CFDs (45%) is interesting to compare to the formal mortgage market in order to gain a partial understanding of the differences in how homebuyers fare in these two markets. While this is by no means a perfect comparison given the difference in markets and time periods,<sup>18</sup> we

<sup>15</sup> In other counties, resources did not allow us to obtain full title histories on the recorded CFDs. Moreover, some counties (Webb and Starr for example) had engaged in a major CFD conversion program (to Warranty Deeds), such that the conversion results would have been inflated.

<sup>16</sup> Our team coded as cancelled any contract for deed that was followed by a recorded cancellation or notice to cancel. We also coded as cancelled those contracts where there was evidence of a forfeiture or quit claim back to the original seller. We coded as an “implied” cancellation a situation in which we could find no document cancelling the contract, but we noted a subsequent filing of a new contract for deed to a second purchaser from the original seller. In such a case, the second contract would be counted as an outstanding contract for deed, if not subsequently cancelled, were it to have been drawn in our 10 percent sampling. Those contracts found to have been assigned by the buyer were deemed to be outstanding, as they were viewed as a perpetuation of the decision-making of the original parties.

<sup>17</sup> Because only three VLB contracts were present in this set, we have not calculated a separate current prevalence rate for these contracts.

<sup>18</sup> This comparison is also imperfect in that some of the CFD cancellations for Maverick County could have been truly voluntary, for cases where the buyer chose to walk away from the purchase, although we suspect that most of the Maverick cases were involuntary cancellations.

obtained data showing the extent to which buyers who obtain a deed and deed of trust from a mortgage institution lose their homes to foreclosure. Of homeowners nationwide who received institutional loans for the purchase of a home between 2004 and 2008 (i.e., origination date), 6.4% total, and 11.9% of Latinos, had lost their homes through foreclosure by February 2011, in the heart of the nation's foreclosure crisis.<sup>19</sup> In Houston, 6.6% total and 8.4% of Latinos who originated home loans during this time period lost their homes through foreclosure by February 2011, and in the Dallas area the figures are 6.5% total and 8.9% of Latinos.

Although it is possible that the Maverick case study is an aberration, we suspect that it is not. It seems very likely that a large percentage of homebuyers in other counties as well who have CFDs (recorded and unrecorded) fail in their endeavors to become homeowners or to sell their lot, and that a high percentage of lots therefore revert back to the original seller or are abandoned.<sup>20</sup> This issue of high turnover in colonias, especially when driven by questionable developer practices, is explored further in Chapter 5.

### Average Conversion Times of RCFDs to Deeds

For the owners we surveyed (see Chapters 4 and 5 for details) and who purchased under a recorded CFD, we set out to identify the average time it took them to obtain a deed, or in other words, the number of years between the recording of the CFD and the recording of the deed. Of the total 927 owner-occupied lots in our database, we found 28 who had purchased using an RCFD that was later converted to a deed of some form. Using the available county appraisal district and county clerk data, we were able to calculate the time to convert from an RCFD to deed in 27 of these cases. On average, for those who successfully converted their RCFD to a deed, it took homeowners 8.4 years to convert (with a median value of 8 years). While a limited number of homeowners took longer than 12 years to convert from RCFD to deed (22.2%, or 6 cases), nearly a third of respondents (29.6%, or 8 cases) converted within 4 years of recording their CFD in the county offices.

After we ran this analysis, we suspected the calculations could be an underestimate of the time taken to convert from a recorded CFD to a deed since, as we have noted in other parts of this report, there is sometimes a lag time between the purchase of a property and the recording of the CFD at the county clerk's office. For this reason, we also sought to assess the extent to which this lag time could affect our calculations. We did this by comparing the years in which both the CFD and deed had been recorded in the county deed records with the purchase year provided by the interviewee.<sup>21</sup> Taking the interviewee's declared year of purchase, the average

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<sup>19</sup> Center for Responsible Lending, Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures (November 2011), <http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-exec-summary.pdf>.

<sup>20</sup> In phase 2 of our study, when we conducted our door-to-door to conduct surveys, we were impressed by the number of abandoned and vacant lots that we came across and wondered how many of these lots became vacant and abandoned as a result of the use of CFD or other more informal titling practices. In a later part of this Report (Chapter 5), we will return to explore more this phenomenon of lot abandonment and vacancy. However, in this Report, we are unable to offer any definitive findings as to what extent CFD cancellations are a factor in lots becoming vacant or abandoned—this subject is certainly interesting for additional research.

<sup>21</sup> The purchase date was not available for certain cases, causing the sample size to fall from 27 to 25.

time between purchase and conversion to a deed was 10.0 years (with a median value of 9 years), which suggests that the lag time between purchase and the recording of the CFD therefore had only a small impact on our average estimate of the time between purchase and conversion. However, the number of cases in which the owner converted to a deed within four years did fall significantly from 8 (30%) of cases to 2 (8%) when the year of purchase from the survey (rather than the date that the CFD was recorded) was used as a proxy for the year in which the purchase agreement took effect.

### *Summary Findings of Trends in Individual Counties Over Time*

In summary format, the overall trends we observed in individual counties across time are:

- ❖ Maverick, Webb, El Paso, Travis, and Bastrop counties experienced noticeable rises in the numbers of recorded CFD in 1995 or soon afterwards, around the time that Texas legislation required that contracts for deed be recorded.<sup>22</sup>
- ❖ In Bastrop, Guadalupe, Cameron, and Travis counties, the number of contracts for deed recorded in recent years is *somewhat lower* than the number recorded in the early nineties.
- ❖ In El Paso, Hildalgo, and Webb counties, the number of CFDs recorded in recent years is *around the same* as the number recorded in the early nineties.
- ❖ In Maverick County, the number of CFDs recorded in recent years is *somewhat higher* than the numbers recorded in the early nineties. Maverick County, following a dramatic rise in recorded CFD starting in 1995, had only a moderate decline in recorded CFD and today has the highest use of CFD of any other county in our set.
- ❖ As we observed in Maverick County, it seems quite likely that a significant minority (perhaps even a majority) of recorded CFDs never translate into a purchaser receiving a final Deed, but are lost to forfeiture or to life course changes that lead to transfer of the property back to the developer, non-occupancy, or abandonment.

In conclusion, perhaps the most important overall “take-home” point from these trends on recorded CFDS is that, contrary to the expectations of those advocating for the regulation of contracts for deed, such contracts continue to be used and recorded at significant rates in the border region and also interior counties far from the border. As we have intimated throughout this chapter, since many CFDs go unrecorded, the data on recorded CFDs is not the end of the story. The next chapter will provide estimates about the fuller extent to which unrecorded CFDs remain an active part of the property sales in Texas colonias and informal homestead subdivisions.

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<sup>22</sup> Webb had a slight dip in recordings in 1997 before dramatically rising, although, as the county narrative section in Appendix A.ii. describes, this pattern could have been a result of recoding practices at the time in the county clerk’s office.

## Chapter 4. Tracking and Estimating Unrecorded Contracts for Deed – Survey Analysis

After documenting the recorded Contract for Deeds in the county record offices, the next major part of the Contract for Deed Prevalence Project—what we called Phase Two—required that we develop a strategy to estimate the number of **unrecorded** contracts for deed (UCFD) by county. In Phase Two, we employed the same definition of contract for deed as that developed in the first phase of this study, using the term broadly to include rent-to-own arrangements as well as other arrangements in which a person is making payments or has made payments for a period of at least one year with the expectation of becoming the legally titled owner following the completion of those payments.

Before going into the methodology for estimating unrecorded Contracts for Deed, here are the key findings from our research related to UCFDs:

### KEY FINDINGS CONCERNING UNRECORDED CONTRACTS FOR DEED

#### ❖ **Unrecorded CFDs are still in active use in Texas in colonias and informal homestead subdivisions:**

- An estimated 6,597<sup>1</sup> homestead owners—13.8% of homestead owners—in colonias<sup>2</sup> of six Texas counties (Hidalgo, Webb, Starr, Maverick, El Paso, and Cameron) had a UCFD as of 2012, highlighting the continuation of informal titling in these counties.<sup>3</sup> See Table 4.3 below.
- We estimate that between 37% and 48% of the owners we surveyed (across all eight counties) purchased their homesteads with a UCFD (see Table 4.5 below).
- Of the owners we surveyed (across all eight counties) who recently purchased their homesteads during the period 2008-2010, we estimate that between 17% and 22% purchased with a UCFD, of whom 17% still have a current UCFD in 2012.
- When looking at the age when a colonia or IFHS was developed, we found higher rates of purchase with UCFD—between 22% and 26%—among recent (2008-2010) buyers in older colonias (developed pre-1989) than in more recent colonias (developed post-1996), where we estimate between 17% and 20% purchased using UCFD.

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<sup>1</sup> With a margin of error that varies for between  $\pm 6.81$  and  $\pm 8.61$  as described in Appendix A.i.

<sup>2</sup> See Appendix A.i. for a discussion of the colonia settlements included in these estimates.

<sup>3</sup> This estimate is based on what we have deemed to be a “moderate” calculation of UCFDs. See the Methodology section below for a discussion of how we arrived at the moderate estimate as well as alternative “conservative” and “liberal” estimates of UCFDs. See Appendix A.i. for a discussion on the margins of error for these estimates.

- ❖ **UCFDs are also found in interior counties** (8% of homestead owners surveyed in Guadalupe and Hays combined), and are relatively high in Hays County (where 11% of homestead owners surveyed currently hold UCFDs).
- ❖ For the owners we surveyed who recently (2008-2012) bought their homesteads and have an active UCFD, 78% bought from another consumer (i.e., a former resident vs. developer), and 22% bought from a developer or land company.
  - In contrast, for the owners we surveyed who bought at anytime during our study period (1989-2012) and have an active UCFD, 57.5% bought from another consumer, and 42.5% bought from a developer or land company.
- ❖ **The UCFDs used in consumer-to-consumer transactions are typically improvised agreements and quite informal**, ranging from handwritten scraps of paper to typed documents that are cobbled together. These documents often lack basic information about the terms of the transaction, along with the statutory-mandated consumer disclosures, notices, and other provisions required by the Texas Property Code. See Chapter 5 for a deeper focus on consumer-to-consumer transactions and Chapter 2 for examples of UCFDs we encountered in the field.
- ❖ **Consumers entering into UCFDs lack access to information about the land acquisition process and how to protect their interests.** As a result, these consumers also lack information on the importance of recording their documents in the county clerk records or do not understand the process for recording their documents. In contrast, consumers with bank loans have the benefit of many other parties scrutinizing the transaction, including the title records and legal documents, and assurances that their titling documents will be recorded.
- ❖ **Of homestead owners in colonias that we surveyed in the six border counties, approximately 19% with *current deeds or recorded CFDs* appear to have purchased with a prior UCFD.**
- ❖ **The use of UCFDs is more common in older colonias compared to newer informal subdivisions.** Of the owners we interviewed in colonias that started to be developed before 1989, between 48% and 59% purchased with a UCFD, and 13.6% have a current unrecorded CFD. In contrast, for subdivisions developed post-1996, between 13% and 21% purchased with a UCFD, and 8.5% of the owners have a current UCFD. This trend is likely driven by the fact that older colonias have a much higher prevalence of consumer-to-consumer transactions than newer informal subdivisions.
- ❖ As we have pointed out in earlier sections of this Report, **the government recordkeeping systems for deed records in Texas are archaic and inefficient.** This phase of our research ran right into these recordkeeping system deficiencies, making it too challenging to come up with precise calculations about the extent to which someone's ownership interests have not been recorded via a UCFD.

## PHASE TWO METHODOLOGY

This next Section details how we arrived at our estimates of active UCFDs as well as what percentage of current resident-homestead owners in colonias bought under a UCFD. While we were able to use online and onsite sources to estimate the numbers of *recorded* contracts for

deed (RCFD) by county, no similar data sources were available to ascertain the prevalence of *unrecorded* CFDs. Thus we could only start this analysis by conducting in-person survey interviews with households in colonias and informal subdivisions. The details of the survey methodology and the actual instruments and protocols that we used were described earlier in Chapter 2 and are not repeated here. Suffice to say that randomly-selected household interviews allowed us to gather data about the who was the purported owner and how the lot had been acquired, and later to juxtapose and cross check this information with the records of ownership at the offices of the applicable county clerks and county appraisal districts. Through these channels we were able to arrive at estimates of the number of unrecorded Contracts for Deed (UCFD) by determining which of the purported owners interviewed have **no record of ownership** in the public record.

As our earlier discussion and database descriptions describe, in addition to the six border counties where colonias were selected randomly, we also included informal homestead subdivisions (IFHSs) in Central Texas counties, as well a number of newer colonias in border counties, all of which were purposively selected. That is, these newer communities were not selected using the random selection criteria identified in our overall methodology. Rather, they were selected purposively so that we might draw comparisons between property conveyance in different types of low-income informal settlements (e.g., colonias vs. post-1995 model subdivisions in the border; and border colonias vs. IFHSs outside of the border). Thus, while this Report ultimately offers comparisons of deed transactions and socio-economic variables across all settlements studied, in the following analysis it is important to differentiate between the data we obtained from our overall survey population (which is not extrapolative to the overall county level) and the data we obtained from **survey households in randomly-selected colonias for the six border counties** (which is extrapolative). Random selection of these colonias was essential in order for us to extrapolate from our survey data in these colonias to all the colonias across the six counties (Cameron, Hidalgo, Webb, Starr, Maverick, and El Paso). The county-level data thus excludes the purposively selected settlements in the six border counties, as well as the data for Guadalupe and Hays counties in Central Texas (see Appendix A.i. and Chapter 2).

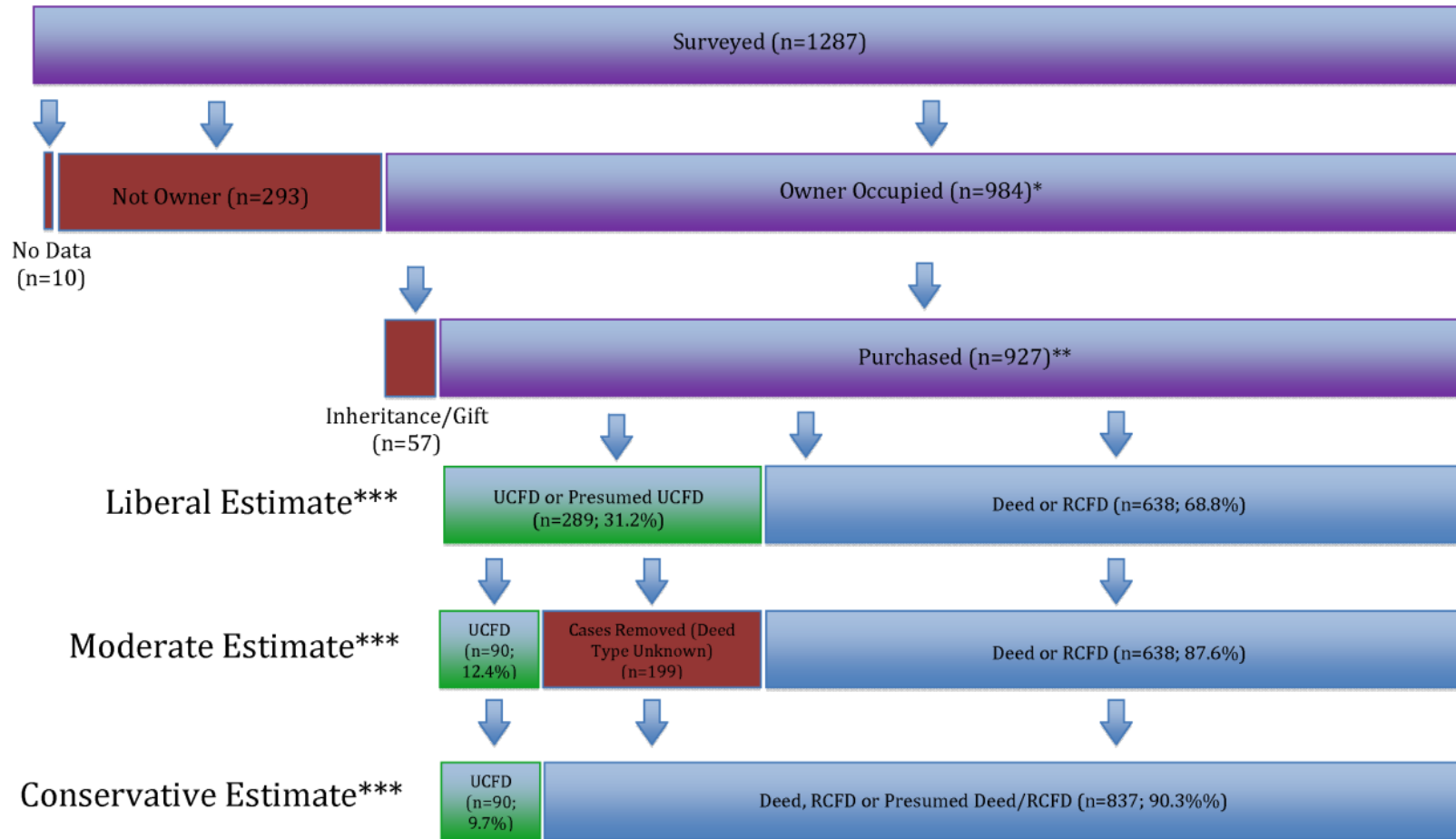
Because our random sampling of colonias did not include post-1995 model subdivisions<sup>4</sup> (the State does not include them in the formal definition of a colonia given their access to water and wastewater infrastructure), this means that the extrapolative county-level data does not include data from the post-1995 model subdivisions, despite their resemblance to the state-defined colonias but for the inclusion of water and wastewater infrastructure. However, because we felt it was just as important if not more important to understand land titling practices in these new communities, we included them in a group of add-on surveys. Even though our findings from these newer communities are not extrapolative, they are still quite informative. For a more detailed explanation of this methodology, see Chapter 2.

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<sup>4</sup> Starting in 1995, under the “Model Subdivisions Rules” imposed by the Texas Legislature and Water Development Board, a developer of a newly platted subdivision in an unincorporated area had to include water and wastewater infrastructure services to residents or provide a financial guaranty for the services prior to receiving approval of the subdivision plat from the county, thereby ensuring (with minor exceptions) that newer communities built in border counties would have access to these basic infrastructure services.

# Current Deed and Contract for Deed Estimates from Surveys in 8 Counties

(RCFD = Recorded Contract for Deed; UCFD = Unrecorded Contract for Deed)



\* The sample size for owner occupied lots is actually 992, although eight cases were excluded due to coder error. These miscodes represent eight of the cases labeled as "No Data."  
 \*\*The sample size for purchased lots in fact contains all owners that did not explicitly report having inherited or received the lot as a gift. Thus, certain cases in which the mode of acquisition (purchased, inherited, etc.) was unclear are included in this count.  
 \*\*\*These estimates differ slightly from those provided in tables throughout this chapter. This is due to the fact that the above estimates refer to actual counts from all counties (see Table 4.4), whereas those throughout this chapter entail extrapolation to the county level (see Tables 4.1 through 4.3).

**Figure 4.1. Current Deed and Contract for Deed Estimates from Surveys in 8 Counties**

In determining which property owners have a UCFD, our definition of ownership was broad. Some of the residents we encountered did not use the term “owner” to describe themselves, as many reserved the use of this term to refer to a person who had finished making all payments on a particular piece of property. We explained to each resident during the survey that the word “owner” was meant to include all persons making payments to buy their lots, as opposed to those merely making rental payments or who were living on the lot rent-free, often with permission of a family member.<sup>5</sup>

For this methodology to work, one obviously has to believe that the residents who reported owning their homes were giving us honest and accurate responses. We spent enough time at the beginning of each interview discussing the terms of these purported purchases to feel comfortable with these assumptions. We note also that residents had nothing to gain through misrepresentation. Finally, any process of estimation of unrecorded contracts must necessarily depend on the word of the parties involved: many are unwritten (oral), and those that are written are not available in the public record by their nature of being unrecorded. Thus, an estimation of UCFDs must necessarily involve the solicitation of subjective understandings and past histories. With these limitations in mind, in order to uncover the number of interviewees surveyed that had in the past, or continue to have, unrecorded contracts for deed (UCFDs), we employed the following methodology in reviewing each completed survey, or “case.” These stages of data collection are portrayed in Figure 4.1 (above), and the key questions posed of the data were:

1. *Did the Interviewee Rent or Inherit Their Lot?*

**Renters** or those living on the lot rent-free were not included in the analysis of which interviewees held UCFD. Those who reported that they had **inherited** the property, or received the property through a **gift**, were also excluded.<sup>6</sup>

2. *Is the Owner’s Name in the Title Records?*

Of those owners surveyed, many did not appear as record owners in the real property title records. These owners were deemed to have **present unrecorded contracts for deed**.

3. *When Did the Owner Purchase vs. When and was the Last Deed or CFD Recorded?*

Of those owners who appeared in the title records, many had a record of a deed in their name, and some a recorded contract for deed (RCFD). A subset within these groups, however, reported having purchased their property more than three years prior to the appearance of their recorded ownership. This subset was deemed to have had **prior UCFDs** that were later converted to a deed or followed by a RCFD.

The first two of these questions are explored in more detail below. In the final section of this chapter, we discuss this last question in the context of our estimating *past* UCFDs that are no longer outstanding.

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<sup>5</sup> Because our focus was on the titling practices surrounding real property for residents, our analysis examines property titles for lots and any improvements to the lots. We did not examine ownership papers of manufactured homes since these are generally not titled as “real” property but are instead titled as personal property through the Texas Department of Housing and Community Affairs. While an individual can choose to title their manufactured home as real property and legally “attach” it to the land, the vast majority of owners do not do this.

<sup>6</sup> We surveyed non-owners in 21.4% of extrapolative cases.

### *Did the Interviewee Rent or Inherit?*

Early in the survey instrument, we asked each interviewee whether he or she (or their spouse) was the owner of the property. As mentioned above, “owner” was broadly defined to include anyone owning outright, or making payments toward becoming the owner, whether or not legally recorded title had yet been conferred. Those residents who told us they were not owners were classified and coded as being either: (1) renters (a term used by us to include individuals paying money under oral or written agreements without an intent of becoming an owner); or (2) “concessions” (individuals who were permitted by a family member or friend owning the property to live there rent-free). In the total survey, some 22.8% (293 cases) fell into these two categories of non-owners. We interviewed these respondents about their non-owner status, although, of course, no questions were asked of them about purchase transactions.

We note that it is possible that the lots for which we interviewed only renters and concessions may indeed have had owners who, unbeknown to the residents and therefore to us, had purchased or sold an interest in the property via UCFD, past or present. These instances of UCFD are not included in the data presented below because, in most cases, the name and contact information of the landlord were not made known to us. Even where renters reported a landlord’s identity, it was often incomplete—a nickname or first name only. This did not preclude a search for the purported owner’s name and mailing address in the relevant county appraisal district (CAD) records, although it made the name-matching process detailed below much more difficult, if not impossible. More important, because we lacked all information about the transactions through which the landlord owners had purchased, including the years of purchase, we opted to exclude them from the Phase Two analysis. As mentioned above, also excluded from our overall count of UCFD are those residents who had inherited their property or received it as a gift. We explore both the inheritance cases and the rental cases in more detail in Phase Three of the study, set out in Chapter 5.

### *Is the Owner’s Name in the Title Records?*

During the survey, owners were asked whether they bought the property under a deed or contract for deed and if the purchase documents had been recorded. The answers were very mixed and often contradictory with what the real property recorded revealed, and so we soon learned that we could not rely on the buyer’s recollection or understanding of the legal status of their title. Some reported having obtained a deed that they registered with the county clerk when there was no record; others believed that the owner had not recorded the CFD but we found a recording of the document. Still others reported that they assumed the transactions had been recorded since their names were in the system used by the county appraisal district (CAD) for taxation purposes. Those interviewees who reported to us having made payments as “owners” of the property and whose names *never* appeared in the various records we examined were deemed to have bought via UCFDs and to continue to be UCFD owners.

In order to determine whether or not a particular owner had a recorded deed or recorded CFD, we attempted to match the owner’s name with any public records we could obtain about the ownership of the lot. This was often very difficult due to the poor quality of county clerk and CAD records in some counties. As mentioned above, in the CAD records, many of the title histories on the lots surveyed are incomplete or missing entirely. Searching for ownership in the county clerk records was also often difficult: first, because of the way these records are tracked via grantor-grantee name instead of via the property address; and second, because we were seeking to prove a negative—i.e., to confirm that the owner’s name had never been recorded as

a buyer of a particular property. Pulling in data from helpful title companies<sup>7</sup> cured some, but not all, of these problems. For example, a small subset of interviews in each county involved lots that could not be located in the CAD records, probably due either to CAD error, surveyor error, or both.<sup>8</sup> Similarly, a small set of properties was found to be in the CAD system but had no title transaction histories recorded therein. Finally, many of the properties located in CAD systems had transaction records that did not go far back enough in time to cover the period in which the interviewee claimed to have purchased.<sup>9</sup>

Because of the numerous data gaps we encountered, we have qualified our findings by assigning degrees of confidence to our findings of UCFDs, which led to conservative, moderate, and liberal estimates of UCFDs. We did this by examining three different variables, which are discussed in the following section. The chart **Figure 4.1** (above), outlines the various steps in our strategy to define Unrecorded Contracts for Deed.

#### *Confidence Variable One: A Name Match*

The first variable is based on whether the name of the owner we surveyed matched the name of the owner listed in the title records (via the last recorded deed or RCFD) for the particular property. We relied heavily on the CADs' online records in this respect, which list the last three deed record transactions, given that this data is not easily accessible online for the county deed records. We grouped the "name match" data into four categories: (1) a "two-name" match where both the first and last name on the survey matched the name on title record, or where two first names (often for spouses) matched; (2) a "one-name" match, where only the first or last names matched; (3) "no match," where none of the names provided on the survey or records matched;

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<sup>7</sup> Our resources for the project did not allow us to pay title companies to run title histories on all the properties in our survey sample. However, we were able to obtain a number of title histories through generous in-kind donations from several companies. See Appendix G. While title histories run from title company abstract records provided us with the most thorough information about recorded land transactions, even these records were incomplete at times. Interestingly, because county deed records in Texas are so difficult to access and grantor-grantee searches unreliable, title companies maintain independent, private databases of transactions recorded in the county deed records.

<sup>8</sup> To locate such hard-to-find lots, our coders used the physical address reported by the interviewee and, where the physical address could not be found in the system, scanned lists of addresses on a particular street or within a particular subdivision, looking for the resident's name. In cases where CAD made available an online plat map, this map was compared with our surveyor's field maps, on which the location of each interview was clearly marked and uniquely identified. Nonetheless, despite these measures, we were still unable to retrieve a few properties in the CAD.

<sup>9</sup> Sometimes this was because only the most recent transaction appeared in CAD. Or, sometimes the presence of numerous recordings touching on a particular property (such as affidavits, liens, and other recordings not altering the state of the title) "cluttered" some of the "last-three-recorded transaction" histories that most CAD systems display, blinding us to what had transpired during the early years in which the alleged purchase had taken place. Our team made every effort to get as "deep" a history on each surveyed lot as possible, by using online CAD and county clerk databases, visiting most such offices at least once in person, repeatedly enlisting the help of employees of these offices, and recruiting title companies to join in the effort on a *pro bono* basis. Even so, some properties' histories remained "shallow" in that they did not, after these efforts, go back far enough in time to cover the purported purchase year given us by the interviewee. That our search produced a "shallow" history does not rule out the possibility that recorded transactions could be found in the CAD or in the county clerk's office with further, more time-consuming research onsite.

and (4) "insufficient data," when either the grantee name of record or the purported owner name on the survey was missing, and therefore insufficient data was present to make a determination regarding whether there was in fact a match. We used this categorization of the nature of the name match (or lack thereof), along with two other related variables that reflect our degree of confidence in other aspects of the data, to come to a range of estimates of UCFD deemed "conservative" and "liberal." The assumptions made in arriving at these estimates are described in more detail below as are how we eventually created the "moderate" estimate.

#### *Confidence Variable Two: Deed-Type Confirmed*

Those survey respondents whose names were found *once* as grantees in a recorded contract for deed (RCFD) transaction or deed were deemed to continue to have RCFD or D, respectively. These were the easy cases.

However, many of the purported owners surveyed appeared in the record in conjunction with document types that did *not* clearly confer ownership to them. For example, some appeared in the listing of an ambiguous deed type label such as "OTHER," and the document was not accessible to us online or remotely with the assistance of those enlisted at the CAD, county clerk, and title company offices consulted. Other purported owners appeared in various records not as owners, but instead in relation to a transaction judged by us as not likely to have transferred ownership based on the information accessible to us.

Although there were dozens of distinct types of transaction records, we condensed these, in all counties studied, into four categories: (1) deeds;<sup>10</sup> (2) contracts for deed (CFDs);<sup>11</sup> (3) "ambiguous" document types, including those labeled as "other," "conversion," or "unknown";<sup>12</sup> and (4) "irrelevant" transactions that do not confer ownership or imply purchase.<sup>13</sup> Again, this variable was then used in creating the conservative, liberal and moderate estimates of UCFDs described below.

#### *Confidence Variable Three: Record Type*

We relied most heavily on CAD records in analyzing the title history for a property given that these records were available online for almost all of the counties we were studying and could be

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<sup>10</sup> These included transactions with the following deed types: warranty deed, warranty deed with vendor's lien, general warranty deed, general warranty deed with vendor's lien, special warranty deed, quitclaim deed, gift deed, assumption warranty deed, assumption deed, assumption deed with vendor's lien, warranty deed with life estate, trustee's deed, substitute trustee's deed, and foreclosure deed. Deed in lieu of foreclosure was not included, as it is commonly used as an instrument deeding property back to a lender, and not to confer ownership to new residents.

<sup>11</sup> Deed types of contract for deed, contract for sale, and contract of sale were deemed to be RCFD.

<sup>12</sup> Our team was able to get clarity on some of these ambiguities by searching multiple record sources or by interviewing staff about the meaning of the codes. Where we could not get additional information about these records, we left them classified as "ambiguous" document types. For example, the deed type "conversion" was used in Hidalgo county but, upon further investigation we learned that this does not refer to a conversion from CFD to deed, but instead to a data system "conversion" through which many deed types were apparently not preserved.

<sup>13</sup> These non-essential transactions that did not pertain to our survey owner having obtained record title included, but were not limited to, affidavits, divorce decrees, and deeds in lieu of foreclosure.

searched by property address. However, as we began collecting CAD data, we quickly realized that some records in the CAD systems had been listed in CAD with volume, page, and instrument numbers (called “deed” numbers) used by the county clerks, but many transaction records found in these CAD systems lacked reference to the deed numbers. For these records, we were not always able to verify that they were records that CAD had obtained from the county clerk’s deed records, or instead were cases where an individual had presented a land transaction document directly with the CAD office (although we concluded the latter was a very infrequent occurrence). Early in the project, therefore, we decided to conduct two analyses—one in which we included only those transactions we were confident had been recorded because they had been verified directly in the county clerk deed records and title company records or contained reference to a deed number in the CAD records, and one in which we cast a broader net to include every transaction record we came across in our searches of all county clerk, CAD, and available title company data systems.

*Current Unrecorded Contracts for Deed: Conservative, Moderate and Liberal Estimates*

**Table 4.1 Extrapolation of Survey Data by Deed Types for Randomly-Selected Colonias in Six Border Counties Showing “Liberal” (Higher Range) Estimations of Current Unrecorded Contracts for Deed (highlighted row)**

			County						Total
			Maverick	Starr	El Paso	Webb	Hidalgo	Cameron	
Deed, CFD, or other recorded title	Count		3150	3670	7050	696	12960	4752	32278
	% within County		73.9%	59.9%	73.4%	42.3%	66.7%	72.0%	67.7%
Current UCFD	Count		1110	2458	2550	948	6480	1848	15394
	% within County		26.1%	40.1%	26.6%	57.7%	33.3%	28.0%	32.3%
Total	Count		4260	6128	9600	1644	19440	6600	47672
	% within County		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

We next used the first two of these three confidence variables to arrive at two distinct estimates of the current UCFDs in the colonias of each county. For the liberal calculation, any lots having missing names next to recorded transactions in the CAD records were deemed *not* to have record ownership in the name of the purported owner we interviewed. Similarly, we assumed that all “ambiguous” transactions recorded without clear deed type codes were *not* deeds or recorded contracts for deed. Along the same lines, we also assumed that the lots we were unable to identify in the CAD or county clerk records did *not* have a recorded CFD or deed in the surveyed owner's name. Finally, we made the same assumption for those lots that, while identified in the CAD records, had no record of any transaction.<sup>14</sup> Each of these assumptions increased the instances in which we labeled a lot as having an outstanding UCFD.

<sup>14</sup> If a lot has been consistently sold under UCFD, then by the very nature of the transaction, there would not be any recorded transaction history for the lot. For example, take a case where a survey owner says she bought her lot in 2004 and the CAD records for the lot, which go back to 1995, do not show any recorded transactions. One possibility is that the CAD recordkeeping system failed to list the recording of

The conservative estimate resolves these gaps in the opposite direction, assuming in the wake of uncertainty that the CAD transaction matches in the survey owner’s name *had* in fact been recorded, thereby yielding a much lower estimate of outstanding UCFDs. We present the full range in this Report so that the reader may see, by county, the estimates of UCFD when different assumptions are made about unavoidable data gaps.

**Table 4.2. Extrapolation of Survey Data by Deed Types for Randomly-Selected Colonias in Six Border Counties Showing “Conservative” (Lower Range) Estimations of Current Unrecorded Contracts for Deed (highlighted row)**

			County						Total
			Maverick	Starr	El Paso	Webb	Hidalgo	Cameron	
Deed, CFD, or other recorded title	Count		3840	5750	8100	1452	17010	6336	42488
	% within County		90.1%	93.8%	84.4%	88.3%	87.5%	96.0%	89.1%
Current UCFD	Count		420	378	1500	192	2430	264	5184
	% within County		9.9%	6.2%	15.6%	11.7%	12.5%	4.0%	10.9%
Total	Count		4260	6128	9600	1644	19440	6600	47672
	% within County		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Before arriving at our final conservative and liberal estimates, we took considerable time to review what we came to call the “swing” set of cases—those cases with data ambiguities ranging from unidentified lots to those with a single missing grantor name—to learn whether the totality of the information gathered by us during the survey and post-survey investigation of deed records could render that lot unambiguously a deed, UCFD, or RCFD. For example, in some cases, early ambiguities in records were clearly resolved by a warranty deed in the hands of our survey owner. In others, the purchase year reported by the purported survey owner was distant enough in time for us to conclude that a particular recorded deed, while missing a name, was not theirs. In some cases, too, we found conflicts between the purported owner’s name and the person to whom CAD had sent a tax bill, leading us to conclude, even where title records were ambiguous, that there was likely a UCFD in play. In sum, we analyzed the ambiguities to remove as many cases that we were confident could be reasonably removed from the “swing” set and into a definitive set (Appendix E.iii Tables 4: A-L.).

We understand the importance of assessing which estimate is the most reliable and meaningful. Obviously, the purpose for which the estimates are used must be considered in selecting an estimate. An agency wanting to educate residents about the risks involved in holding unrecorded claims to property might well want to rely on our most liberal estimate. That estimate casts the broadest net to capture as many actual or potential UCFDs as possible, by resolving

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a deed or RCFD for this survey owner in 2004. The other possibility is that the owner bought under UCFD. Our liberal estimates assume that the survey owner bought the lot under an UCFD versus RCFD or deed.

data ambiguities (e.g., the owner’s full name missing in CAD for a warranty deed listed) in favor of the assumption that the owner does not have a deed in his name and therefore has a UCFD. This most liberal estimate yields an extrapolated average current prevalence rate of UCFD of 32.3%. In other words, **under this liberal estimate, approximately 32% or almost 15,400 of homestead owners residing in colonias of El Paso, Hidalgo, Cameron, Maverick, Starr, and Webb currently hold an UCFD (unrecorded contract for deed).**<sup>15</sup>

Other readers of this Report may prefer to work off a more conservative estimate. As seen in the full Results Appendix E.iii Tables 4 A-L, when these same data ambiguities are resolved in favor of an assumption that the owner *does* have a deed in his name and therefore *does not* have a UCFD, the estimate drops to 10.9% of those owners surveyed. In other words, **under our conservative estimate, approximately 11% (5,184) of homestead owners residing in the state-defined colonias in El Paso, Hidalgo, Cameron, Maverick, Starr, and Webb currently hold an UCFD.** The “swing” between the liberal and conservative poles is large for a reason: data ambiguities in one form or another, described at length in the methodology section above, played a large role in our examination of title records.

**Table 4.3. Extrapolation of Survey Data by Deed Types for Randomly-Selected Colonias in Six Border Counties Showing “Moderate” Estimations of Current Unrecorded Contracts for Deed (highlighted row)**

			County						Total
			Maverick	Starr	El Paso	Webb	Hidalgo	Cameron	
Deed, CFD, or other recorded title	Count		3759	5556	7916	1289	16371	6253	41075
	% within County		88.2%	90.7%	82.5%	78.4%	84.2%	94.7%	86.2%
Current UCFD	Count		501	572	1684	355	3069	347	6597
	% within County		11.8%	9.3%	17.5%	21.6%	15.8%	5.3%	13.8%
Total	Count		4260	6128	9600	1644	19440	6600	47672
	% within County		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

As is so often the case, we suspect the truth lies somewhere in between the liberal and conservative estimates and Table 4.3 includes a county-breakdown of our moderate estimate of UCFDs currently held by colonia resident-owners in the six counties we studied and those colonias that were randomly selected in order to generate data from which we could generalize (extrapolate) to the wider county level.

<sup>15</sup> As discussed above and in more detail in Appendix A.i., the term “colonias” used in developing these estimates is limited to those settlements contained in the database maintained by the Texas Office of Attorney General and the Texas Secretary of State, and thus does not include post-1995 settlements developed in compliance with the State’s model subdivision rules, even though these newer settlements share many features with the state-defined colonias.

Given the high rates of recorded ownership in the cases in which the data are clear and intact, it does not make much sense to resolve all missing data points against recorded ownership. Seeing this trend, we were tempted to abandon the liberal estimate, which, in our view, offers a rather misleading view of the reality. However, it does not make a lot of sense to resolve ambiguities in favor of recorded ownership all the time, either. Nor were we comfortable with a sampling that “split the difference.” Below, we describe how we imputed a moderate estimate based upon the ratio of reliable and ambiguous records (see also footnote 16).

Our moderate estimate uses the clean data cases to predict, or impute, the missing data for the ambiguous cases. In order to move from the conservative to the moderate estimates, we first removed from the set all cases with ambiguity. Thus, the actual percentages of UCFDs in the database did not rise (Appendix E.iii. Tables 4: A-L. See Tables 4C & 4D), but the number of cases included in the analysis fell due to our rejection of cases with data insufficiency and ambiguity. To translate this into an estimate that might be compared with the liberal and conservative estimates, we then imputed for those cases temporarily excluded a set of values consistent with the rate of UCFD prevalence observed in the clean dataset.<sup>16</sup> Because rates of recording are so high in the clean-data cases, this moderate estimate—about 14%—is quite close to the conservative estimate, which resolves all questions in favor of recorded ownership in the surveyed owner. As a comparison in Appendix E.iii., Tables 4G and 4H, when one relies on the non-imputed numbers, the extrapolation percentage remains the same, but the extrapolated estimate of the total number of UCFDs drops from 6,600 to 5,200. While we are comfortable with the imputed adjustment, others may prefer to use the non-imputed moderate estimate in Appendix E.iii., Table 4.H.

To deal with the third confidence variable discussed above, we performed conservative, moderate, and liberal estimates first with all transactions we had found from any of our three sources (county clerk records, title companies’ records, and CAD systems) and then again using only those transactions in which formal recordings within county clerks’ systems could be easily verified. This created multiple sets of estimates. Using fewer sources meant, as we expected, fewer instances of recorded ownership, yielding higher numbers of UCFD.

We went into this analysis thinking that we would adopt the estimates based upon only county clerk recordings because, as we mentioned earlier in this report, a transaction is formally made “of record” only through recording with the county clerk. However, after grappling with numerous datasets from these counties and their CAD and county clerk offices,<sup>17</sup> we concluded that an

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<sup>16</sup> To see this, assume there were 110 total cases, 10 of which were excluded from the moderate analysis because they contained ambiguous or insufficient data. Of the 100 cases remaining in the moderate analysis, assume that 70% (70) of those cases involved interviewees with recorded deeds, 20% (20) involved UCFD, and 10% (10) were RCFD. In arriving at a moderate estimate, our model would assume that of the excluded 10 cases, 70% (7) would be labeled as deeds, 20% (2) as UCFDs, and 10% (1) as RCFD. Our moderate estimate would predict a distribution of 77 deeds, 22 UCFDs, and 11 RCFDs. The conservative estimate would yield figures of 80, 20, and 10 respectively, while the liberal would predict values of 70, 30, and 10.

<sup>17</sup> Several features of county clerk record-keeping made it far more difficult for us to use than CAD systems. First, most systems were not online. Second, many county clerks and their employees were too overwhelmed by work to be able to assist us meaningfully. Third, the database systems often did not allow for us to conduct name searches in many cases. Searches by lot, if possible, often required entering the precise legal description. Many of the CAD systems allowed for online location of lots only through map features. For all of these reasons, we very quickly came to the conclusion that we would

estimate based only on those recorded transactions we actually found in the county clerk data systems missed many instances where a deed or CFD has nonetheless been recorded. Based on our experience, we concluded that many of the land transactions referenced in the CAD records have indeed been recorded with the county clerk; that is, just because a particular transaction lacks a reference to a deed record number in the CAD records does not mean that it has certainly not been recorded. Instead, most of these records appear to involve cases in which we suspect that the CAD staff member entering the information about a land transaction obtained the information from the clerk's deed records but did not code the deed record number into the CAD database.<sup>18</sup>

For this reason, we have chosen as most reliable the moderate estimates set forth above in Table 4.3, which are based on all three sources where we could find evidence that a deed or CFD had been recorded. **Under this moderate estimate, almost 14% (13.8% in Table 4.3 above) of owners residing in the state-defined colonias in El Paso, Hidalgo, Cameron, Maverick, Starr, and Webb currently hold an UCFD.**

#### *Moderate Estimate Likely an Undercount*

It bears noting that this moderate estimate is probably an undercount, even though we prefer it to the more liberal estimate for the reasons outlined above. We say this because we think it possible that not all of the kinds of data ambiguity we encountered in this phase of the study were randomly distributed across our dataset.<sup>19</sup> Instead, we suspect that, at least for some kinds of data gaps, those cases we removed as ambiguous may have been more likely to have involved the absence of a recorded instrument. In other words, we suspected that the lack of any transaction data for a lot in CAD was more likely the result of there being no recorded transactions (and thus an UCFD) for the lot rather than shoddy record keeping on the part of CAD.

#### *Overview: The Continuing Use of Recorded and Unrecorded CFDs in the Six Border Counties*

As mentioned above, the average UCFD still in play across these counties, using the moderate estimate for all transactions identified, is around 14%. Our total (moderate) extrapolations estimate that approximately 6,597 outstanding UCFDs exist in the state-defined colonias across these six border counties, highlighting the continuation of a pattern of informal titling in the area. In contrast, the liberal estimate, in ascribing informal ownership in each instance where records lack clarity in name or deed type, exceeds 15,000 outstanding UCFDs.

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need to rely upon CAD data, which in most cases was online, and easy to access by street address and property owner's name.

<sup>18</sup> We suspect this may happen when an instrument is brought first to a CAD office prior to being recorded at the county clerk's office and thus being assigned a volume, page, and document number. This pattern may also have resulted from poor communication between the county clerk and CAD, which we encountered in several counties.

<sup>19</sup> To summarize, our team experienced the following kinds of data ambiguity, each of which are removed from the moderate estimate: (1) lots not retrievable in CAD or county clerk records; (2) missing names in CAD records for transactions involving transfer of ownership; (3) missing deed type codes for recorded transactions; and (4) transaction data (in the case of CAD records) that did not date back far enough to reach the interviewee's purported year of purchase.

We encountered residents with Recorded CFDs or Deeds, on average, in about 86% of lots surveyed (moderate estimates). There is some variation between counties, which requires elaboration. Where one observes higher deed prevalence (for example, in Starr) this may be attributed to the recent work of conversion assistance programs. However, we provide these Starr and Webb county-wide estimates, in particular, with considerable reservation. The impact of the ambiguities in our dataset in a county like Starr, for example, are apparent as one moves from our moderate to liberal estimates; since the estimated number of owners in colonias with recorded deeds in that county fall from 94% (of the total) to just 60% (and conversely the proportion of UCFDs rises from 6% to 40%; see Appendix E.iii. Tables 4E and 4F). That the distance from moderate to liberal is the biggest in Starr is no surprise, as the number of ambiguous records in that county was also extremely high. To review these differences across the counties surveyed please consult Appendix E.iii. Tables 4: A-L.

As one can observe, the large majority of owner-residents we surveyed in colonia and informal homestead subdivisions have a deed or a recorded Contract for Deed, but the current estimated non-extrapolative rate of UCFDs from the resident-owners we surveyed varies by county from a low of 2% in Guadalupe to 22% in Webb, with an average of 12.4%.

*Unrecorded CFDs in Non Border Counties*

So much for the border counties on our survey, but what evidence is there for UCFDs for the informal homestead subdivisions (IFHSs) in the counties of Hays and Guadalupe? Appendix E.iii Tables 4: A-L. presents tables of the actual data and percentages that also include these two counties. In Table 4.4 (also reproduced below) we display the moderate (imputed) estimates from our surveyed households for all counties. Remember that the data presented here is not extrapolative across the county but is specific to the settlements we surveyed.

**Table 4.4. Survey Data by Deed Types across All Eight Counties Showing Moderate Estimates for Current Unrecorded CFDs for Residents Who Purchased Their Homesteads (Non-Extrapolated, Non-Imputed Data)**

		County								Total
		Maverick	Starr	El Paso	Webb	Hidalgo	Cameron	Guadalupe	Hays	
Deed, CFD, or other recorded title	Count	105	58	102	58	121	99	48	47	638
	% of Owners	88.2%	90.6%	82.9%	78.4%	88.3%	90.8%	98.0%	88.7%	87.6%
Current UCFD	Count	14	6	21	16	16	10	1	6	90
	% of Owners	11.8%	9.4%	17.1%	21.6%	11.7%	9.2%	2.0%	11.3%	12.4%
Total	Count	119	64	123	74	137	109	49	53	728
	% of Owners	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Although the cell size is low (N=6), the survey data for Hays County in Central Texas showed that 11% (one in ten) of resident-owners surveyed currently held UCFDs. Combined with our data in Chapter Three, we underscore that CFDs—recorded or unrecorded—are an important

mechanism of land acquisition in low-income settlements in unincorporated areas, and are not just a border phenomenon.

Given the fires that ravaged Bastrop County in September 2011 and the subsequent focus on disaster recovery, we did not survey any settlements for UCFDs in Bastrop County, where our Phase Two research showed high usage rates of recorded CFDs (Appendix E.i., Table A). We suspect that UCFDs are also actively used in Bastrop County, given the lower reliance on deeds compared to many of the other counties we surveyed. Even though we arrived at a low estimate of UCFDs in Guadalupe County, we know for a fact from previous survey work, the work of the Law School's Community Development Clinic, and discussions with county officials, that CFDs and UCFDs are actively used there.<sup>20</sup>

Later in this Report (Chapter 5), we will explore differences in land titling between certain counties and between colonias and IFHSs. We will also explore whether there are major differences between those who acquire lots in traditional colonias that were randomly selected, and the ones that were more purposively selected—in Central Texas as well as in newer model subdivisions along the border.

#### *Estimating the Use of Unrecorded Contract for Deed at the Time of Purchase*

We also sought to determine the prevalence of UCFDs at the time of purchase. In order to do so, we used the same methodology as that of arriving at the moderate estimate of current UCFDs detailed above. That is, we selected owner-occupied lots, but excluded those in which the owner reported having received the lot through inheritance or as a gift. Also excluded were those cases in which there existed some sort of ambiguity in the title records that prevented us from making a clear determination of ownership.<sup>21</sup> One additional problem we faced in determining the use of UCFD at the time of purchase was the comprehensiveness of the title records. In certain cases, no title record existed for the year of the purchase, or for the preceding years. These records, which we began to classify as “shallow,” prevented us from determining whether or not a title had in fact been recorded in the owner's name at or near the time of purchase, since such shallow records may simply not have gone back sufficiently far in time for us to view the owners' earliest recorded title. While including these shallow records may

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<sup>20</sup> See [www.lahn.utexas.org](http://www.lahn.utexas.org), and click on “Texas Housing Studies” and “Rancho Vista and Redwood report.”

<sup>21</sup> Note that because the current estimate is concerned with *the most recent title*, and the title-at-purchase estimate is concerned with *the earliest recorded title at or after the time of purchase*, the cases classified as ambiguous are not necessarily the same in both the current and at-purchase UCFD estimates. This is visible in the different sample sizes between the moderate estimate of current title (Table 4.4, sample size of 728) and the one-year and three-year estimates for title at the time of purchase (Table 4.5, sample sizes of 651 and 649). Furthermore, slight discrepancies exist between the sample sizes of the one-year and three-year estimates for title at purchase due to the absence or presence of ambiguous data within or between the one and three-year windows. Thus, certain cases may be labeled ambiguous, and therefore will be excluded in one estimate and not in another. Data ambiguities, which are far more common earlier in the CAD records, are unlikely to affect the current title estimate, but are very likely to reduce the sample size and the percentage of UCFDs in the estimate of the title at the time of purchase, as these ambiguities are more common in earlier title records. However, while the exclusion of ambiguous cases from the UCFD-at-purchase estimate thus likely reduces the estimate of UCFDs, we believed it was important to use the same methodology as was used in the current UCFD estimate for comparability between the two.

lead to an overestimation of the number of UCFDs at the time of purchase, we did so in order for easy comparison with our procedures and estimates of current title.<sup>22</sup> That said, we feel confident that the majority of such records were shallow **precisely because** no title had been recorded at the time of purchase, and therefore, had occurred using UCFD.

In comparing the prevalence of current UCFDs and those at the time of purchase, we chose to use only the moderate estimate because, by excluding data ambiguities it is: (1) likely the most reliable estimate; and (2), because it facilitates easy comparison between the current and at-purchase calculations.

In order to calculate the type of title at the time of purchase, we analyzed the time period, or the “gap”, between the purported purchase date and the year in which the title was recorded. In other words, we were forced to create “cut off” years, after which we considered the absence of a recorded deed or CFD in the owners’ name would constitute a UCFD. We felt that providing at least a one-year buffer would be important in order to account for cases in which the owner may have mistaken the exact purchase date—an occurrence which is much more likely for those who purchased decades ago—or who may have purchased toward the end of one calendar year but recorded the title at the beginning of the following year.

We determined the appropriate cutoff points after examining the distribution of the “gap” years,<sup>23</sup> eventually settling upon using **both** one and three years as logical cutoff points that would provide distinct high and low estimates of the prevalence of UCFDs at the time of purchase. The one-year estimate therefore labels as a UCFD any case in which a greater than one-year gap exists between the purported purchase date and the recording of title, while the three-year estimate considers as UCFD all cases in which the gap between purchase and the recording of title is greater than three years. Thus, the three-year estimate provides lower, and therefore more conservative, estimates of the prevalence of UCFDs at the time of purchase. Both estimates are displayed in Table 4.5.

Looking at the type of title at purchase by county, Maverick, Starr, El Paso and Webb counties appear to have the highest rates of usage of UCFD at purchase, with each county showing low (three-year cutoff) estimates of 47% or greater, and high (one-year cutoff) estimates of close to 60%, meaning that as many or more than half of respondents in these counties likely purchased

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<sup>22</sup> The issue of shallow data had a negligible effect on the estimate of current UCFDs because, as noted previously, the estimate is concerned with the most recent title recorded in the owner’s name. Therefore, a specific case may have shallow CAD records, but as long as a current title is recorded in the owner’s name the shallowness is irrelevant. However, since the UCFD-at-purchase estimate is concerned with the first title recorded at or after purchase, shallow data has the potential to have a greater impact on the estimate. We chose to include such shallow cases for comparability between the at-purchase and current UCFD estimates.

<sup>23</sup> In order to achieve this we examined the frequency of “negative” gap years, or those in which the purported date of purchase occurred after a title transaction was recorded at the county office. Obviously, this is illogical, as one would not receive title to a property that they have yet to purchase. However, we felt that these negative gaps years were likely demonstrative of those cases in which the poor recollection of the interviewee resulted in them mis-estimating the purchase date. While gap years of negative one were rather common, negative two and negative three were less so, and less than four was rare. Finally, all of the cases with negative gap years were folded into the deed or CFD estimates. In other words, by way of an example, if a respondent claimed to have purchased in 2000 but a deed appeared in his or her name in 1998, the respondent was classified as **having received a deed at the time of purchase**.

the lot using UCFD. Even in the remaining counties, low and high estimates range from 21% to greater than 40% of homeowners having purchased using UCFD.

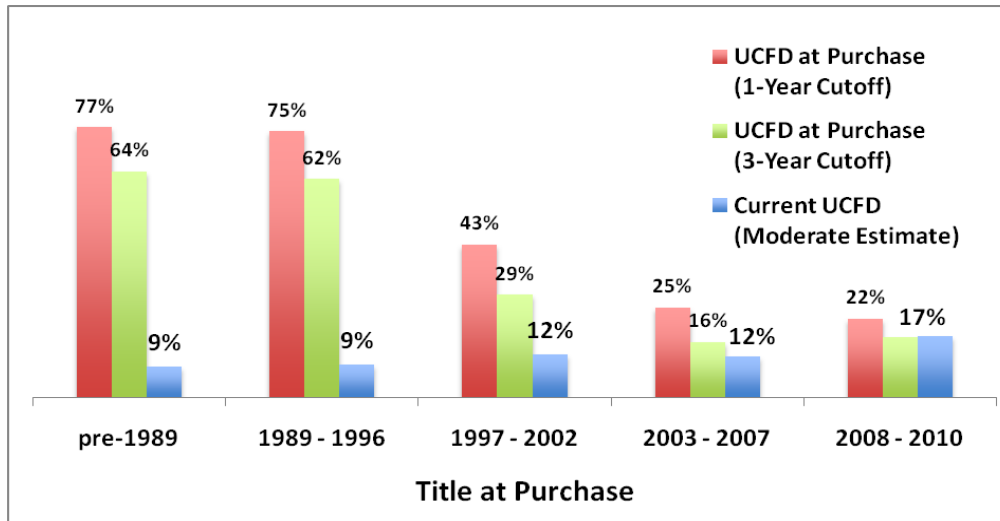
**Table 4.5. Survey Data Across All Eight Counties Showing High (One-Year Cutoff) and Low (Three-Year Cutoff) Estimates for Deed Type at Purchase (Non-Extrapolated, Non-Imputed Data)**

			County								Total
			Mave- rick	Starr	El Paso	Webb	Hidalgo	Cameron	Guad- alupe	Hays	
High Estimate (1-Year Cutoff)	Deed, RCFD, or other recorded title	Count	39	21	43	25	84	61	32	32	337
		%	40.6%	38.9%	39.8%	41.0%	64.6%	59.2%	69.6%	60.4%	51.8%
	UCFD at Purchas e	Count	57	33	65	36	46	42	14	21	314
		%	59.4%	61.1%	60.2%	59.0%	35.4%	40.8%	30.4%	39.6%	48.2%
	Total	Count	96	54	108	61	130	103	46	53	651
		%	100.0 %	100.0 %	100.0 %	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Low Estimate (3-Year Cutoff)	Deed, RCFD, or other recorded title	Count	50	28	51	31	97	77	36	38	408
		%	52.6%	51.9%	47.2%	51.7%	74.6%	74.8%	78.3%	71.7%	62.9%
	UCFD at Purchas e	Count	45	26	57	29	33	26	10	15	241
		%	47.4%	48.1%	52.8%	48.3%	25.4%	25.2%	21.7%	28.3%	37.1%
	Total	Count	95	54	108	60	130	103	46	53	649
		%	100.0 %	100.0 %	100.0 %	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Comparing current UFCDs with UCFDs at the time of purchase we looked at time periods up to 2010.<sup>24</sup> The results, illustrated in Figure 4.2, show how a large percent of owners we surveyed who purchased with a UCFD before 1997 have converted to a deed or CFD. In contrast, very few recent buyers have yet converted their UCFDs. For owners who bought between 2008 and 2010, we estimate that between 22% (1-year cutoff) and 17% (3-year cutoff) purchased with a UCFD, and that 17% (moderate estimate) have a current UCFD. While neither estimate is perfect, viewed in tandem, the one-year and three-year estimates offer a fairly accurate picture of titling practices *at the time of purchase* and the extent to which such practices have changed over time. As a general rule, however, it is probably best to use the three-year estimate for those who purchased further in the past, while in recent years (perhaps post 2002) the one-year estimate is probably more reliable.<sup>25</sup>

<sup>24</sup> Because purchases made in 2011-2012 may be undergoing recording or updating in the CAD records, estimates for type of title at time of purchase would be underestimated substantially.

<sup>25</sup> This is due to the fact that those who purchased recently are less likely to have misestimated their purchase date, and in these cases, the one-year cutoff is likely more reliable. However, for those who



**Figure 4.2. UCFDs at Time of Purchase vs. Current UCFDs**

Cross-analyzing purchase years with the age of colonias, in older (developed pre-1989) colonias, we estimate that between 22% and 26% of sales from 2008 to 2010 involved a UCFD, compared with only 17% and 20% in more recent (developed post-1996) colonias. Over this same purchase time period, 22% of owners who purchased recently (2008-2010) in pre-1989 colonias, and 17% in post-1996 colonias, currently have a UCFD, showing little to no title conversion. What this suggests is that UCFDs continue to be an important feature of land and property sales. Moreover, from our survey data we know that these new UCFDs are occurring mostly in consumer-to-consumer transactions (which we examine further in Chapter 5). Indeed, as the following example shows, the reasons for non-recording can be quite specific which makes it difficult to generalize the reasons—in this case, the documentation was signed by the father-in-law, since the daughter and her husband were undocumented and feared identification in the public records. (Although, in fact, being undocumented is not currently a reason for not recording, although conceivably it could become so in the future.)

**Example of Consumer-to-Consumer Sale with UCFD  
June 2012 Interview in Cameron County**

When Melissa Abel got pregnant, she and her husband were in a hurry to buy a place of their own and to no longer rent. Melissa’s husband looked at five or six other properties, but all of them required bank financing. The bank was not willing to give the husband a loan because he could not demonstrate having worked for two years continuously. The couple needed a “place to be” to gain “peace of mind” before having the baby, and to have an address with which to obtain health insurance. When they finally found a property that would accept seller financing, they decided to buy under the name of Melissa’s father-in-law, “because he had papers” and could “act on their behalf if they needed a loan later.” Melissa went to the notary with her husband to sign the papers for the lot, but doesn’t know the details or what type of title they obtained. The appraisal district record shows the property still to be in the seller’s name. There is no record of the purchase documents being recorded.

purchased decades ago, a two- to three-year lapse in memory is understandable, and the one-year estimate would therefore likely overestimate the actual number of UCFDs at the time of purchase.

### *Using the “Gap” Analysis to Estimate the Conversion Time from UCFD to Deed or RCFD*

Having determined the prevalence of UCFD at the time of purchase, we set out to investigate the time to conversion, or the number of years between the purported purchase of the lot and the recording of either a deed or CFD in the property records. In order to achieve this, we started with only those cases across the dataset for which we had some type of transaction data going at least as far back as the surveyed resident-owner’s purported year of purchase. That is, for this analysis, we took out cases in which the data was too “shallow” to let us see the full time period across which the interviewee claimed to have purchased the property (e.g., where the surveyed resident-owner’s purchase date occurred longer ago than the last three transactions appearing in the CAD records).<sup>26</sup>

Next, we compared the surveyed resident-owner’s purported year of purchase with the year that the interviewee’s name appeared in the title records<sup>27</sup> with an RCFD or deed. In order to provide a lower, and therefore more conservative estimate of the time to conversion, where the dates were three or less years apart, we judged the “gap” to have more likely been caused by an error in memory than by the presence of a prior UCFD. However, if the purported purchase year was four or more years before the appearance of a recorded CFD or deed transaction, then we deemed it likely that the resident-owner had purchased under an UCFD that was later supplanted by the deed or RCFD.

In the ways described above, and having whittled down our dataset to resident-owners who reported having bought their lots sooner than their appearances in the records, we arrived at our estimates of the number of people we encountered by county who had likely bought via UCFD but who now have recorded ownership through a deed or those who recorded a CFD after a lapse of four or more years. We labeled these as “prior” or “past” UCFDs (highlighted in yellow in Table 4.6). Assuming, conservatively, that those with a discrepancy of three or less years between their purported purchase date and the date that their recorded deed or RCFD appeared in the public record had also purchased with the deed or RCFD, we estimate that at least 19% of those *with current deeds or recorded CFD* probably acquired their lot originally through an unrecorded contract for deed or through some sort of informal contract (e.g., oral agreement and receipts).<sup>28</sup>

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<sup>26</sup>It is important to note that, as discussed earlier, removing these “shallow” cases likely results in an underestimation of those homeowners that purchased under UCFD. However, we chose to remove such shallow cases in order to provide a lower, and therefore more conservative estimate of the time to conversion.

<sup>27</sup> For the reasons set out in the previous last section, we again pulled title records primarily from the following three sources: CAD offices, county clerks’ offices, and title companies.

<sup>28</sup> It is important to note that this gap analysis only includes those cases in which a deed or CFD appears in the property records. Those cases in which a UCFD remains outstanding have therefore been excluded, since no years-to-conversion calculation can be made in these instances. For this reason, the 19% estimates of UCFDs at the time of purchase in this Table refers **only to those homeowners who currently hold a deed or CFD** in their name, and is thus lower than the estimate provided in the following section.

**Table 4.6. “Gap Analysis” to Ascertain a Lapse of Four or More Years Between Alleged Purchase Date and Appearance in the Record Indicative of a Prior Unrecorded CFD**

Purchase Gap from purported year of purchase and the confirmed year of Deed or RCFD being recorded	Deed	CFD	Total
<b>0 = same year</b>	177 52.2%	7 25.9%	184 50.3%
<b>1-2 years</b>	81 23.9%	9 33.3%	90 24.6%
<b>3 years</b>	22 6.5%	0 0%	22 6.0%
<b>4-9 years</b>	37 10.9%	7 25.9%	44 12.0%
<b>10-15 years</b>	17 5.0%	3 11.1%	20 5.5%
<b>16+ years</b>	5 1.5%	1 3.7%	6 1.6%
<b>Totals</b>	339 100%	27 100%	366 100%

*Concluding Discussion: The Future of Unrecorded Contracts for Deed*

Ascertaining these estimates of the rates of UCFD use has not been easy. Although many respondents have a good idea of the sort of papers that they had now, few could substantiate with any accuracy the sort of papers that they had received at the outset when they purchased their lot. In the face-to-face interviews, only a few were able (or willing) to show us the documentation that they had currently (although some did and allowed us to take photos); and even fewer gave us access to papers from their purchase (if they had them, and most did not). Inevitably, therefore, we needed to reconstruct the trajectory as best we could in the manner outlined earlier, and even then we were left with a substantial minority of cases with queries and inconsistencies that required further effort through title searches, call backs to the county clerks’ offices, CAD searches, etc. Ultimately, even these efforts sometimes proved inadequate to reconcile the inconsistencies and forced us either to drop the cases entirely from the analysis, or to caveat them when we felt that they were probable but not definitive evidence of a UCFD.

At the outset, TDHCA asked us to provide best estimates, and this we have done. A liberal estimation, which assumes that all of the ambiguous cases were UCFDs, once extrapolated to the county level, generated an estimated 32% of current UCFDs for colonias (that were randomly selected and sampled and which form the basis for extrapolation) across the six border counties (Appendix E.iii Table 4: E-L.). Exclusion of these same ambiguous cases provided a “conservative” estimate of 11% (close to the bounds of confidence limits of +/- 6-8% that the statistical purist would require us to set). Because of the way in which we have imputed the data, our “moderate” estimate inclines towards the conservative datum line (14%). However, we are confident that this is not an unreasonable estimate with which to work, although the likelihood is that the true level may be somewhat higher. We know for a fact that certain colonias do indeed have higher levels of UCFDs, approximating the liberal estimate, but without the random selection of colonias strategy upon which we embarked, it would never have been possible to extrapolate to colonias at the countywide level.

Our hard counts in the previous chapter show that CFDs as a transaction mechanism remain firmly in play. The estimates described in this chapter also suggest that there is a significant “underbelly” of non-recorded current CFDs, especially in recent consumer-to-consumer transactions. Our “gap analysis” is also indicative that among those who today hold a secure deed or a recorded CFD, at least one-fifth have come to that deed via an unrecorded contract of some sort or another.

We also suspect that there are good reasons to expect CFDs and UCFDs to remain in active use in Texas in both interior and border counties, and we will elaborate upon this in the following chapter. Suffice to note that other research findings ([www.lahn.utexas.org](http://www.lahn.utexas.org): “Texas Housing Studies”) and our own observations in this current research suggest that many developers have moved away from using CFDs as the transaction of choice, in favor of warranty deeds and deeds with vendor’s lien. With the exception of the newest subdivisions, developers appear to be less engaged today in a second round of sales compared to the past (1970s & 1980s) when developer-to-consumer was the norm.<sup>29</sup> Today, sales of lots in older subdivisions are increasingly likely to be consumer-to-consumer (i.e., the resident who purchased originally from a developer sells directly to the future resident), and, in most cases the lack of formal financing means that such transactions will be under a CFD, whether recorded or unrecorded.

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<sup>29</sup> New subdivisions are exceptions since in these settlements one does observe developers selling lots to a buyer and then later to another buyer after a repossession form the first buyer—a feature we refer to as “lot flipping” and explore in the next chapter.

## Chapter 5. General Survey Results and the Reproduction of Informality in Texas Colonias and Subdivisions

### INTRODUCTION:

In addition to our primary focus on developing estimates of recorded and unrecorded CFDs, we proposed to TDHCA an assessment of how and why property titles were changing over time, and the extent to which new forms of informality have become part of land transaction practices in colonias today. Recognizing that new forms of informal homestead subdivisions are now widespread in counties outside of the border, we also proposed to broaden our analysis to include informal homestead subdivisions in Central Texas counties, as well as newer informal homestead subdivisions that were emerging alongside colonias in the border counties. The survey was designed as the starting point for our analysis of these broader topics. While we needed to ensure random selection of settlements and households that would allow us to extrapolate to the countywide level for colonias in the six-county<sup>1</sup> analysis of recorded and unrecorded CFDs presented in Chapters 3 and 4, in this chapter we are more concerned with insights into the full range of land and housing transaction practices in both colonias and informal homestead subdivisions. Thus, in the following analysis, we seek to generalize about colonia and informal homestead subdivisions in all eight counties where we surveyed.

The data presented here come from two main sources: First, the survey itself. In the first part of this chapter we offer an overview of the principal survey findings for the many questions from the survey (see Appendix C for copies of the survey in English and Spanish), as well as an analysis of those findings broken down by county, type of colonia or subdivision, and by type of transaction. Secondly, these data are also informed by additional telephone interviews of residents we had surveyed who were selected from a pool of “interesting cases” that been flagged as such by our surveyors and survey coders. Many residents had agreed to give us their phone numbers for possible call backs at a later date, and as we began to identify themes that we felt were important to understand in more depth, we conducted several of these additional interviews. “Interesting” cases for several themes emerged, including: succession and inheritance of lots and homes from first to second generations of homeowners, consumer-to-consumer to sales, the changing nature of developer sales and practices, lot renting by owners, and lot abandonment.

Not all of the interesting cases and themes we identified lent themselves to follow-up telephone interviews. For example, renting by owners, the status of vacant lots, and reasons for abandonment require more extensive downstream surveys of owners who are not available on the site of the lot. While we have started some of these surveys, they need further development and so will not form part of the substantial findings of this report. We also undertook a partial follow-up sample in the county appraisal district records for several new model rule subdivisions in order to gauge the extent to which lots were recently being sold by developers and then rapidly being repossessed by the developer, presumably for non-payment—a process we describe as “flipping.”

In short, the aim in this chapter is to begin to look to the future and predict the direction of lot acquisition, the extent to which informality continues to prevail in these communities, and the extent to which new forms of informality are becoming more predominant. Even though we

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<sup>1</sup> As discussed in earlier section of the Report, the six counties to which the extrapolative data applies are Cameron, El Paso, Hidalgo, Maverick, Starr, and Webb.

cannot generalize across counties with exactitude about the scope of these evolving practices and trends, we believe that identifying them and suggesting directions for further research and policymaking will prove helpful. Indeed, this broader focus was the primary motive for us in undertaking this research project in the first place. We will return to future directions and policy implications in Chapter 6.

## **SURVEY FINDINGS: AN OVERVIEW**

A total of 1,133 surveys were conducted in border colonias and IFHSs throughout Hidalgo (246), Webb (194), El Paso (193), Cameron (187), Maverick (182), and Starr (131). We conducted an additional 154 surveys in the Central Texas counties of Guadalupe (77) and Hays (77), for a total count of 1,287 surveys. See Appendix A.v. for the full listing of survey returns. As noted in Chapter 3, we started with a randomly-selected sample of colonias and properties to survey, and these formed our extrapolative cases from which to generalize results. As the survey moved forward, we included non-extrapolative cases in: 1) newly-developed informal homestead subdivisions in Cameron and Hidalgo; and 2) informal homestead subdivisions in Central Texas. We also made an effort at mail-back surveys in three Model Rule Subdivisions: Drake subdivision (El Paso County) and Pueblo de las Palmas and Salida del Sol subdivisions (Hidalgo County) See Appendix A.v. Extrapolative surveys constituted 77.5% of the total sample, central subdivisions 12%, new border subdivisions 9%, and mail-back returns 1.5%. The following is a summary of general findings with cross-analysis comparative details. For purposes of this chapter, we use the terms “colonias” and “informal homestead subdivisions” interdependently except where noted. For a further discussion of the meaning of these terms, see Chapter 1.

**Important Note:** The data in Chapter 5 are mostly drawn from the whole database and county-wide analyses and should not be seen as representative of all colonias and subdivisions in that county since not all were randomly selected. Only the data for the randomly-selected colonias in the six border counties (see Chapter 2 and Matrix 1 in Appendix D) may be considered representative (within the margins of error established in our statistical analysis, Appendix A.i). However, because extrapolative cases constitute the majority of our sample, the whole database profiles mirror our general results in many instances. Nonetheless, where appropriate, and where we wish to generalize, random sample findings are highlighted. Occasionally the actual numbers and percentages presented here do not tally exactly with the survey data numbers. Such differences are minor, however, and are due to different databases that were constructed throughout the research project: the lot logs database, for example, versus the final survey database.<sup>2</sup> For the most part, the survey data numbers are the ones that we use since these are based upon the actual numbers. However, even here there is occasional ambiguity, for example, with the term “inheritance,” where some owners had inherited property from their deceased spouse but did not consider themselves to have inherited the property.

The following general findings will not include data and analysis that relate directly to later sections: namely consumer-to-consumer versus developer sales; inheritance and succession; renting and the vacant and abandoned lot analysis. Instead, the survey findings will be discussed within those sections.

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<sup>2</sup> This explains occasional discrepancies in the baseline data of vacant lots in the section on lot abandonment, for example.

*Owners and Renters: Background SES Data and Comparisons*

The heads of household we surveyed included: 972 owners, 190 renters, 29 respondents who live rent free from an owner who does not reside on the property, and 20 who live rent-free from an owner who resides on the property.<sup>3</sup> The fact that 16% of those surveyed were renters was a surprise to us, and these data are discussed further in the section on renters below. The analysis of owners identified that: 523 had purchased from a developer (or holding or land company), 326 had purchased from another consumer, and 24 had inherited their homestead from a deceased former owner. An additional 33 had received their property via a gift from living family members. Only 7% of the owners we surveyed indicated that they were related to the seller; this appears not to influence whether the sale was land only or the land and house together.

Of all persons interviewed, 96% were Hispanic, and 62% were female. A comparison between owners and renters we surveyed shows significant differences in age and employment categories, and, while not statistically significant (measured in terms of Chi Square), renters showed lower-income levels (Table 5.1). Key findings include:

- ❖ Owner heads of household are much older while renters are much younger.
- ❖ The modal number of paid workers in the household for owners and renters is one.
- ❖ Fifty seven percent of owners vs. 63% of renters have monthly household incomes under \$1,600.

**Table 5.1. Head of Household Age, Paid Workers in House, and Monthly Household Income**

Head of Household Age	Paid Workers in House				Monthly House Income									
	Owners *		Renters *			Owners **		Renters **						
	All	Ex	All	Ex		All	Ex	All	Ex	Owners		Renters		
					All	Ex	All	Ex		All	Ex	All	Ex	
18 - 30	8%	6%	31%	33%	0	24%	27%	15%	18%	\$599 or less	9%	8%	8%	10%
31 - 40	22%	20%	37%	34%	1	44%	43%	57%	60%	\$600 - \$999	23%	26%	32%	34%
41 - 50	25%	26%	16%	16%	2	24%	23%	23%	19%	\$1,000 - \$1,599	25%	25%	23%	26%
51 - 60	19%	19%	8%	9%	3	6%	5%	3%	1%	\$1,600 - \$2,399	20%	17%	19%	15%
61 or over	26%	30%	8%	8%	4 or more	2%	2%	1%	1%	\$2,400 or more	24%	24%	18%	15%

Ex = Extrapolative ; chi sq. significance: \* p < 0.01 ; \*\* p < 0.05

*Settlement Age and Home Tenure*

All respondents were asked the year they moved into their neighborhoods, which also allowed us to develop a “colonia age” proxy variable by estimating when the first quartile of respondents moved into a respective colonia or informal homestead subdivision. This tells us when the settlement hit a “tipping point” of development and is the basis for the “colonia age” variable. Actual move-in years were obtained primarily from the random survey conducted in each subdivision.

<sup>3</sup> There were an additional 76 interviewees who did not identify in their survey whether they were owners or renters.

Owners were also asked the year they purchased their homestead, while renters told us the year they started renting. Combining these two responses allowed us to estimate how long the current residents have been in their homes. Key findings for all cases (extrapolative in parenthesis) are shown in Table 5.2 below:

- ❖ Roughly half of owners and renters live in colonias and informal homestead subdivisions that were developed prior to 1989 (*66% and 60% respectively in extrapolated colonias in the 6 border counties*).
- ❖ Owners and renters differ very significantly with regards to their length of residence in their current home: 68% (*76%<sup>4</sup>*) of owners have lived in their homes 10 or more years, while 74% (*73%*) of renters have lived in their homes for 4 or less years.

**Table 5.2. Colonia Age and Home Tenure**

Colonia Age Where They Live	Owners **		Renters %		Home Tenure				
	All	Ex	All	Ex	Owners *		Renters *		
					All	Ex	All	Ex	
					<b>24 + years</b>	24%	30%	1%	1%
<b>pre-1989</b>	51%	66%	48%	60%	<b>16 - 23 years</b>	22%	25%	3%	3%
<b>1989 - 1996</b>	30%	29%	38%	37%	<b>10 - 15 years</b>	22%	21%	5%	5%
<b>post-1996</b>	19%	5%	13%	3%	<b>5 - 9 years</b>	19%	14%	18%	18%
					<b>1 - 4 years</b>	13%	10%	74%	73%

Ex = Extrapolative ; chi sq. significance: \* p < 0.01 ; \*\* p < 0.05

#### *Household Owner Information*

All owners were asked to provide household information, including those who purchased, inherited, or were gifted their properties (N=972 all owners, N=745 extrapolative sample). Prior census data and studies have found that larger family units are typical in colonias, partly as an economic means of pooling their resources and partly as a result of higher birth rates and extended families living under the same roof. The data from our survey supported this:

- ❖ In the United States and Texas, the average number of persons in the household, respectively, is 2.59 and 2.78 (for the period 2006-2012, U.S. Census QuickFacts). By comparison, in our extrapolative sample, the average household size<sup>5</sup> is 3.84, and is 4.16 in our non-extrapolative sample. We found larger household sizes in newer subdivisions, which may be explained by the fact that in older colonias the children have grown and are moving out of the home, whereas more recently formed communities contain more Hispanic families earlier in their life course.
- ❖ We also found that there are often additional people living on the lot outside the primary homestead. The mean number of persons living on the entire lot was 4.03 (extrapolative) and 4.32 (non-extrapolative). Prior studies have found that this practice of accommodating additional extended family or close friends on the lot is quite common in

<sup>4</sup> Parenthesis and italics indicate extrapolative data for the 6 border counties where we conducted surveys in randomly-selected pre-1995 colonias.

<sup>5</sup> Reported mean values utilized throughout this document are 5% trimmed means to remove any outlier influence (top and bottom 5% of values) from the data.

informal communities where relatively large lot sizes allow for additional structures to be added onto the lot.

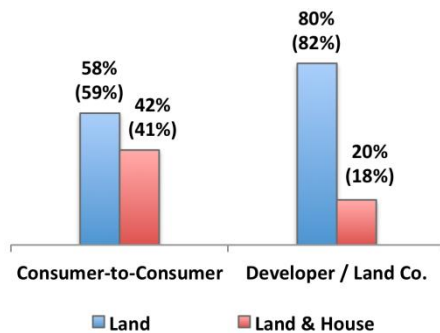
The survey explored a number of questions related to the owners' marital status and children from past and current relationships, which as discussed in the inheritance section, is important for understanding future inheritance issues. Overall, 75% of our owner sample reported that they were formally married or in a common law union, 9% were widow/widower, 7% divorced, 6% single, and 2% separated. Not surprisingly, more persons in our extrapolative sample of older colonias have been married longer and show higher rates of divorce when compared to the residents in the more recently developed subdivisions, with their higher prevalence of younger owners.

### Purchase Types

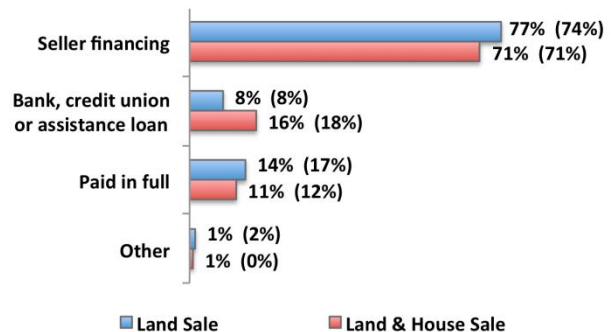
The following discussion pertains to owners who *purchased* their properties (N=885 all surveys, N=663 extrapolative surveys). Overall, 70% of owners stated that their initial purchase was for the land only, while 30% purchased both the land and house. However, when we analyze by the type of seller we find that land-only sales were tied more with developers' sales than with consumer-to-consumer transactions (Figure 5.1). Further decomposition of the method of payment categories in Figure 5.2 indicates that:

- ❖ Seller financing has been the dominant source of financing.
- ❖ Formal financing through mortgages and bank loans appear only in a minority of cases, as do cash or outright payments in full.
- ❖ Eight percent of developer sales versus 21% of consumer sales were paid in full at the time of sale (differences statistically significant at the 1% level [ $p < 0.01$ ]).

These findings highlight the important differences in the nature of property sales by type of seller. Consumer-to-consumer sales are more likely to involve payment in full up front. While seller financing is the norm in all cases, consumer-to-consumer sales prefer to avoid seller financing where possible. This is not surprising given that low-income consumers selling their homesteads will often need the sales proceeds to finance their own new dwelling purchase, compared with developers who are in the business of financing multiple lots and can afford to receive payments extended over longer periods of time.



**Figure 5.1. Sales Type: Land or Land & House**  
 chi-square  $p < 0.01$   
 extrapolative % in parenthesis



**Figure 5.2. Method of Payment**  
 chi-square  $p < 0.01$   
 extrapolative % in parenthesis

Assessing sales patterns in our extrapolative colonias in the six border counties, 71% of sales involve the land only, compared with 60% in the two Central Texas county subdivisions (statistically significant at the 1% level). At the county level, Webb (extrapolative county) has more (80%) land-only purchases than other counties (statistically significant difference), while Hays (a non-extrapolative Central Texas county) has more (45%) land & house purchases. The remaining counties show smaller differences, ranging from 64% to 77% in land-only sales, and 23% to 36% in land/house sales.

Cross-tabulation results show a high correlation between time periods when the purchase was made and the type of purchase (land versus land & house). The percentage of land-only transactions was greatest in older sales (pre-1997). In recent sales (2008-2012), land & house transactions have become the majority of sales (58%) in our extrapolative sample of colonias, compared with the non-extrapolative cases where land transactions still constitute about two-thirds (64%) of all sales. Intuitively this is not surprising as the extrapolative data set included a representative sample of older colonias where land purchases from 16 or more years ago are now turning over into land & house sales. This also corresponds to the finding that in older colonias (established pre-1989) land/house sales have increased over time. By comparison, many of the non-extrapolative neighborhoods are made up of newer subdivisions where land transactions are dominated by developers. The results for land-only transactions by purchase price over time (by purchase year) are illustrated in Figure 5.3:

- ❖ The price of land in land-only purchases has risen over time. Measured in terms of **2012 equivalent dollars**, 66% of land-only purchases made prior to 1989 were \$15,000 or less, and only 8% were \$25,000 or more. In contrast, for purchases after 1996, 75% were for more than \$15,000, and 30% were over \$25,000. These differences in purchase patterns are highly significant and also apply in the extrapolative cases for the six border counties.



**Figure 5.3. Land prices by purchase year (\$2012)**

chi=quare  $p < 0.01$

### Purchase Payments

Affordability and limited access to financial markets are key reasons why people choose to live in informal settlements, albeit at considerable social costs of relatively poorer living conditions. For them, the American Dream of being a homeowner begins with this small investment. We were interested in exploring how land and housing acquisition costs for these homeowners have changed over time so we standardized nominal values to 2012 dollars (using the housing price index) by corresponding payments with the purchase year. Hence, **reported values in this**

**section are in 2012 dollars.** Table 5.3 provides a summary of our primary findings from the survey on purchase payments:

- ❖ For all owner purchasers, the average price paid for land only was \$17,339 (median \$16,405), while the average price for land/house was \$47,365 (median \$40,730).<sup>6</sup>
- ❖ For owners from the extrapolative sample, the average land price was \$15,175 (median \$14,117), while the land/house average price was \$30,345 (median \$30,432).<sup>7</sup>
- ❖ The down payments on land purchases averaged \$1,355 for all owner purchasers (\$1,424 extrapolative), and initial monthly payments averaged \$281 (\$270). Not surprisingly, land-and-house down payments were larger (mean \$3,868 [\$4,386]), as were the initial monthly payments (mean \$482 [\$462]).

**Table 5.3. Purchase Payments: Extrapolative vs. Non-Extrapolative**

	All Sales (N=885)		Extrapolative Sales (N=663)		NonExtrapolative Sales (N=222)	
	Mean	Median	Mean	Median	Mean	Median
<b>Land</b>	\$17,339	\$16,405	\$15,175	\$14,117	\$23,955	\$22,185
Down Payment	\$1,355	\$706	\$1,424	\$771	\$1,216	\$614
Initial Monthly Payment	\$281	\$265	\$270	\$238	\$307	\$303
<b>Land &amp; House</b>	\$47,365	\$40,730	\$30,345	\$30,432	\$60,005	\$48,963
Down Payment	\$3,868	\$2,830	\$4,386	\$3,570	\$2,723	\$1,753
Initial Monthly Payment	\$482	\$448	\$462	\$437	\$533	\$472

Note: The 5% “trimmed mean” is reported for mean values to remove outliers (the top and bottom 5% of values) from the data.

The surveys did not collect information about the lot size or the property values, so these data, together with information about title transactions, were subsequently gathered from the respective county appraisal district office (CAD), as described in Chapter 3. Although a painstaking task, it allows us to offer some assessment of land and house value differences among our study areas.

- ❖ Across the settlements we surveyed, the lot square footage averages were 14,629, with a median of 11,820 (Table 5.4). For extrapolative cases, the largest share (29%) of lot sizes are between 5,000 and 7,500 square feet and have a trimmed mean of 12,261 square feet (median 10,010).
- ❖ At the county level, the trimmed mean (median in parenthesis) square footage of the lots we surveyed was, in ascending order: Starr 5,716 (5,550); Hidalgo 9,244 (5,992); Cameron 15,267 (11,715); Maverick 15,590 (15,000); Webb 16,870 (10,500); El Paso

<sup>6</sup> Converting into 2012 dollars makes a big difference especially when it involves purchases in the relatively distant past. For example, in nominal dollars, 66% of all land prices reported are \$15,000 or less, but when converted to current dollars only 44% are \$15,000 or less. Similarly, 68% of all land/house prices are \$40,000 or less in nominal terms, versus only 46% in today’s prices.

<sup>7</sup> Only 40 surveys for a land and house purchase were from extrapolative surveys (vs. 95 land/house purchases from all the surveys), so the mean/median values are based on a small sample.

18,034 (19,535); Guadalupe 26,639 (21,780); and Hays where the lots were much large (one acre) -- 43,438 (43,560).

- ❖ The 2011 appraisal value per lot square foot size averages \$3.16 for the full survey sample, and \$3.52 for the extrapolative surveys.
- ❖ At the county level, the 2011 trimmed mean (median in parenthesis) appraised value per square foot was, in ascending order: Hays \$0.94 (\$0.74); Guadalupe \$1.30 (\$0.99); El Paso \$2.31 (\$1.59); Webb \$2.81 (\$2.68); Cameron \$2.98 (\$2.81); Maverick \$3.29 (\$2.68); Starr \$4.20 (\$3.83); and Hidalgo \$4.69 (\$4.73). (But note that average lot sizes run in reverse order so these values are more a reflection of average lot sizes than the appraised value of land.)

**Table 5.4. Land Size and 2011 Appraised Value: Extrapolative vs. Non-Extrapolative**

	All Properties (N=1,287)		Extrapolative Properties (N=998)		NonExtrapolative Properties (N=289)	
	Mean	Median	Mean	Median	Mean	Median
Land SqFt	14,629	11,820	12,261	10,010	25,384	22,290
Appraised Value / SqFt	\$3.16	\$2.84	\$3.52	\$3.26	\$1.50	\$1.09

### *Current Titles*

As described in greater detail in Chapter 4, we obtained property records from the county appraisal districts (CADs), and in certain cases county clerk’s offices and title companies. We then cross-referenced these records with information obtained from our surveys. Using these data, we created three distinct (conservative, moderate, and liberal) estimates to provide differing calculations of the prevalence of unrecorded contracts for deed (UCFDs). In this section we analyze the type of title in comparison with other variables such as income or age. In order to do so, each of the following analyses uses the moderate estimate, which excludes all cases in which some sort of data ambiguities preclude the assigning of a definitive current title type.<sup>8</sup>

Across all counties, the majority (85.3%) of the properties surveyed have deeds (Table 5.5). The lowest share (2%) of current unrecorded contract for deeds was found in Guadalupe County, whereas the largest share (21.6%) in Webb County. Within the extrapolative sample which constitutes 72% of the total 728, the results mirror the total—83% deeds and 14% UCFDs. By comparison, in the non-extrapolative sample, the share of current deeds and UCFDs is 91% and 8%, respectively, so we find 6% more UCFDs in our representative colonia sample. When we look at current UCFDs within the age of the settlements, 14% are found in pre-1989 colonias, 13% in settlements developed between 1989 and 1996, and 9% in post-1996 colonias.

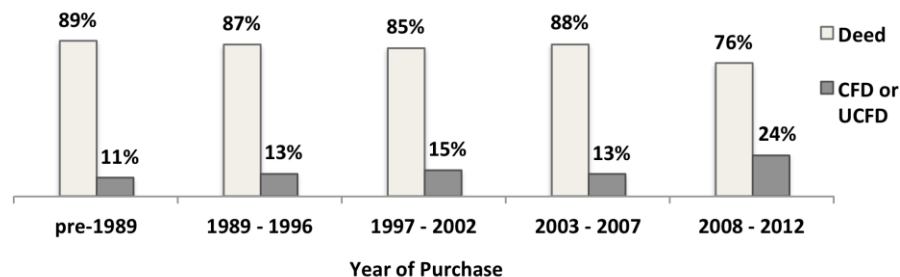
<sup>8</sup> For example, cases in which the absence of the owner’s name in the property records prevented us from determining the title true owner of a lot have been excluded. See Chapter 4 for greater detail on the types of data ambiguities that we encountered as well as the exact methodology used in creating each of the three estimates.

**Table 5.5. Current Titles by County**

County	Deed	CFD	UCFD	Total N
Cameron	90.8%	0.0%	9.2%	109
El Paso	76.4%	6.5%	17.1%	123
Guadalupe	98.0%	0.0%	2.0%	49
Hays	86.8%	1.9%	11.3%	53
Hidalgo	88.3%	0.0%	11.7%	137
Maverick	81.5%	6.7%	11.8%	119
Starr	90.6%	0.0%	9.4%	64
Webb	78.4%	0.0%	21.6%	74
Total	85.3%	2.3%	12.4%	728

Cross-analysis of current titles with key household background information shows the following:

- ❖ Statistically, there is a difference between age and the type of current title, mainly, respondents 41 through 50 years old are more likely to have a CfD or UCFD, while deeds predominate in the 61 or above age group.
- ❖ Household income and the number of paid workers within the household do not statistically influence the type of current title.
- ❖ Purchases over the last three or four years have the highest shares of current UCFDs (Figure 5.4). This tells us that these owners have had less time to convert.



**Figure 5.4. Current Title by Purchase Year**

(Note: There are very few cases of recorded CFD so they are combined with unrecorded CFDs)

#### *Titles Received at Purchase*

We also set out to determine the type of title received at purchase, and to evaluate whether significant differences existed between those who purchased with deed or CFD and UCFD. First we created two distinct estimates for the title received at purchase. In order to do so, we evaluated the time between the purported purchase from the survey and the recording of a title document in the property records. In the high estimate, which used a one-year cutoff point, any cases in which greater than a one-year gap existed between the purported year of purchase

from the survey and the recording of a title transaction were deemed to have purchased using a UCFD. In the low estimate, a three-year cutoff was used.<sup>9</sup>

In Chapter 4 we explained how we went about estimating whether or not there was an UCFD with one or three years of an appearance in the formal record. Without repeating the methodology here looking at all owner-occupied lots (i.e., excluding those who inherited or received the lot as a gift), between 37% (lower estimate) and 48% (higher estimate) of respondents appeared to have purchased the lot through UCFD (Table 5.6). The highest rates of UCFD purchase are seen in El Paso, Maverick, Starr, and Webb Counties, where low estimates approach or exceed 50%. In Cameron, Guadalupe, Hays, and Hidalgo counties the low estimate reveals that closer to 25% of owners purchased with UCFD.

**Table 5.6. Titles at Purchase by County**

County	High Estimate (One-Year Cutoff)				Low Estimate (Three-Year Cutoff)			
	Deed	CFD	UCFD	Total N	Deed	CFD	UCFD	Total N
<b>Cameron</b>	59.2%	0.0%	40.8%	103	74.8%	0.0%	25.2%	103
<b>El Paso</b>	29.6%	10.2%	60.2%	108	34.3%	13.0%	52.8%	108
<b>Guadalupe</b>	67.4%	2.2%	30.4%	46	76.1%	2.2%	21.7%	46
<b>Hays</b>	58.5%	1.9%	39.6%	53	69.8%	1.9%	28.3%	53
<b>Hidalgo</b>	64.6%	0.0%	35.4%	130	74.6%	0.0%	25.4%	130
<b>Maverick</b>	37.5%	3.1%	59.4%	96	46.3%	6.3%	47.4%	95
<b>Starr</b>	38.9%	0.0%	61.1%	54	51.9%	0.0%	48.1%	54
<b>Webb</b>	41.0%	0.0%	59.0%	61	51.7%	0.0%	48.3%	60
<b>Total</b>	49.3%	2.5%	48.2%	651	59.5%	3.4%	37.1%	649

Analyzing the title at purchasing in comparison with other variables, we find:

- ❖ No statistically significant difference exists in the household income, nor in the number of workers per household for those who purchased with formal titles (Deed and CFD) or a UCFD.
- ❖ Statistically, those who purchased using UCFD were no more likely to have purchased from a relative.
- ❖ When looking only at cases in which the owner made multiple payments over time (i.e. did not pay for the lot or home outright), the average (trimmed mean) downpayment at time of purchase was \$3,150 vs. \$2,548 for Deeds and CFDs (both recorded and unrecorded), suggesting that larger down payments are more common in property transactions in which the owner received the deed at the outset (See Table 5.7). The average (trimmed mean) down payment at the time of purchase was \$2,432 for formal transactions (deeds and recorded CFDs) but only \$2,018 for UCFDs.<sup>10</sup>

<sup>9</sup> See Chapter 4 for a detailed discussion of this methodology.

<sup>10</sup> These figures do not differentiate between purchases involving the land only and those involving the land and a home.

**Table 5.7. Down Payments by County and Title at Purchase**

	Deed		CFD or UCFD	
	Mean	Median	Mean	Median
<b>Cameron</b>	\$2,368	\$628	\$2,858	\$1,744
<b>El Paso</b>	\$1,678	\$1,134	\$1,458	\$1,134
<b>Guadalupe</b>	\$1,575	\$626	\$2,669	\$1,972
<b>Hays</b>	\$4,102	\$4,061	\$1,815	\$1,255
<b>Hidalgo</b>	\$1,231	\$566	\$2,828	\$805
<b>Maverick</b>	\$6,038	\$5,954	\$1,792	\$846
<b>Starr</b>	\$4,555	\$5,941	\$1,587	\$1,449
<b>Webb</b>	\$5,361	\$4,607	\$2,282	\$1,396
<b>Total</b>	\$3,150	\$1,057	\$2,548	\$1,225

## **DEVELOPER STRATEGIES AND “FLIPPING” OF LOTS**

Later in this chapter we will examine the rising trend of consumer-to-consumer sales, but before turning to that analysis we report on the changing patterns of developer land sales in colonias and subdivisions, and introduce additional analysis that we conducted in two recent subdivisions that are, we believe, emblematic of a new wave of developer-led sales and practices.

Colonia promotion and formation has traditionally been associated with developers who would acquire agricultural or scrub land beyond the city limits, file a plat, and then sell off lots under seller financing, usually through Contract for Deed (recorded or unrecorded). As we saw in Chapter 3, after legislation in 1995, developers on the border were required to record CFDs, and a similar requirement was made for non-border subdivisions after legislation in 2001. Prior to 1995, most developer promotions came with minimal services or a complete absence of services. Sometimes developers promised services downstream, but as complaints from buyers began to increase, and as the Texas Legislature and agencies began to pursue developers under consumer protection laws, developers began to be more explicit in what they were promising. Most made clear that sewage and wastewater were not contemplated but that the buyer was responsible for installing septic systems and contracting for water (Ward 1999).

While some developers became notorious at the time—for example, Ciso McDonald and Martha Cadena in Webb County, and Blas Chapa and Elias López in Starr County—and were frequently hounded into bankruptcy by sequestration through state agencies, it is important to note that they were not universally vilified by colonia populations. They often maintained good relations with buyers, cut them slack when they missed payments, and were rarely aggressive in repossessing lots (Ward et al 2005). However, their failure to provide services, their sometimes dubious practices of selling lots in arroyos and inadequately delimiting lots, and their perceived exploitation of low-income households, increasingly led to efforts to require them to improve or else shut down their operations. The Model Subdivision Rules legislation in 1995 required that developers build the services up front or post a bond for services before selling property. Additional legislation restricted the use of CFD, requiring a range of consumer protections. Meanwhile, outside of the border, subdivisions akin to colonias—the IFHSs discussed in this Report—continued to be developed unabated.

Thus, most of the pre-1989 colonias—which formed the basis of our survey’s random sampling in the six border counties—were developed by the old-style developers, selling lots without services through use of use of contract for deed, both recorded and unrecorded. We went into this project thinking that more recent lot sales consisted mostly of infilling and re-sales in the pre-1989 colonias. However, as we began to review Google Earth images for our colonia selection, we realized that in some counties (Cameron, El Paso, and especially Hidalgo), several new settlements were actively being developed under the Model Subdivision Rules and thus with services. Some of these newer settlements are very large (such as Drake in El Paso and Pueblo de las Palmas in Hidalgo County). Local officials and NGO leaders also alerted us to the proliferation of these new subdivisions, and to the “new style” and new cadre of developers in these subdivisions. For these reasons, we resolved to break out of the strict random selection of colonias and purposively chose several new subdivision settlements for interviews or “papering” with mail-back surveys as described in Chapter 2.

For Phase Three of our project and for the current chapter, in addition to analyzing the survey database about lot and house purchases in new subdivisions we also resolved to dig deeper and try to interview some of these new developers to better understand the changing nature of how they manage their portfolios. We ended up not having sufficient time or resources to pursue many of these interviews, and, the developers we did contact were skittish about talking with us. However, we were able to get a sense from the county appraisal district records (via the transaction histories) of how they are managing their operations, who the key players are, and the type of titles that are using to sell lots. As we observe below, developers, and the land transaction practices that they appear to use today, differ greatly from yesteryear.

### *The Practice of Property Flips in Drake and Pueblo de las Palmas*

#### Method

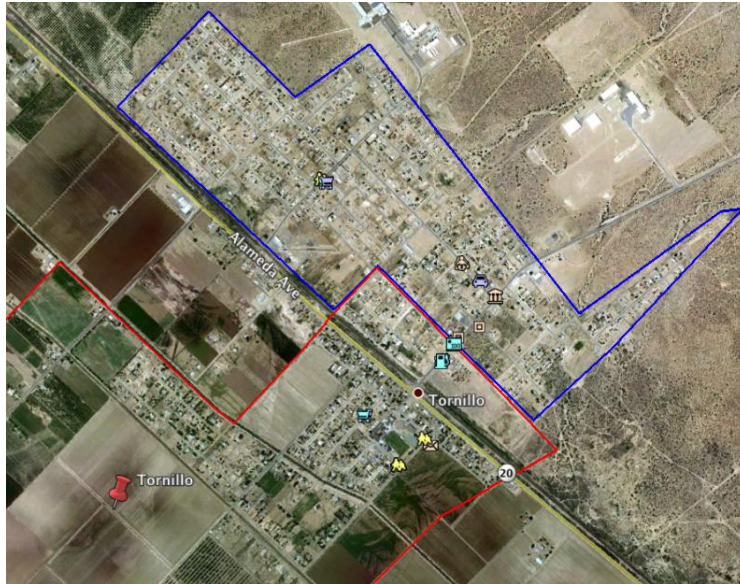
Drake in El Paso County and Pueblo de las Palmas in Hidalgo County are relatively newly developed subdivisions. Initially they were not included in our sample survey for face-to-face interviewing, but were subsequently added as a purposive analysis of present-day developers. The lots in these two communities were chosen for mail-back surveys, although only a few were returned, mainly due to the fact that the survey instrument was long and was largely tailored to administration by an interviewer.

For the property flip analysis, we researched lots in the two communities through the respective county’s central appraisal district records. The online CAD deed history provides, at most, the three most recent deed transactions for each lot, so we were limited with how far back in time we could go in understand the developer’s history with a specific lot. We define a flip as a transaction where the property is foreclosed upon or defaulted back to the seller. Given our limitation of three CAD transactions, we were only ever going to be able to capture one full flip for each lot (since a flip requires two transactions, from seller to buyer then back to seller), as well as ascertain whether whether the developer resold the property after the flip.

Using Google earth aerial maps, we randomly selected a street and looked it up in CAD. The first street property ID was our starting point. In Drake we sampled every 8<sup>th</sup> property, excluding CAD records for just mobile homes (i.e., records that did not include a lot). In Pueblo de las Palmas we sampled every 10<sup>th</sup> property. In Drake we covered the entire community for a final sample of 75 lots. In Pueblo de Palmas we sampled until 100 properties were covered since we felt we had a sufficient sample to generalize results (actually, by the time we reached 100 lots, all streets within the community were fully covered with the exception of one).

## Drake Findings

Drake Subdivision is located in the southeastern part of El Paso County, in the northern edge of the Tornillo CDP (between Alameda Ave. and I-35), with roughly 350 lots. The developers of this area are Dale and Tonya B. Drake and Drake Enterprises. Review of the plat records obtained through the El Paso Planning Department shows that Drake Subdivision encompassed seven units of development, the first one starting in 1992 and the seventh one starting in 1998. The trimmed mean lot size in Drake is 30,521 square feet (median 23,724), while the average lot price per square foot is \$1.22 (median \$1.14), as illustrated in Table 5.8.



**Figure 5.5 Drake in northern Tornillo CDP, southeastern El Paso County**

Out of the 75 properties randomly sampled, 8 (10.7%) of these lots had at least one flip, and all but one of these involved the developer. Six flips involved transactions from CFD to warranty deed, that is to say the developer as seller provided a recorded CFD to the buyer, and then at the point of flip, the property was transferred under a warranty deed from the buyer back to the developer. The other two transactions involved a CFD from the developer to the buyer and then a CFD back to the developer. (None of these flips involved a deed-in-lieu of foreclosure.)

For 5 of the 8 properties that flipped to the developer, there was a subsequent resale by the developer to another party. The flip time periods ranged from under a year to five years, but all but one of the flips occurred within two years or less of the purchase of the property (based on the recording date in the CAD records).<sup>11</sup> Further to our analysis in Chapters 3 and 4, we also found that 72% (54) of the 75 properties sampled had been sold with a recorded CFD, and 52% (28) of these did not appear to have been converted into deeds as of the end of 2011. As mentioned above when describing the timeframe of Drake's development, we see a concentration of recorded CFDs occurring in 2004. Additionally, 7 warranty deeds with vendor's

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<sup>11</sup> Average flip rates are difficult to estimate because listed CAD dates do not necessarily reflect the exact date of when the transaction was closed, they may instead reflect when the paperwork was recorded. For example, if one compares the same property ID in CAD and the county clerk's public records, dates for the same transactions do not necessarily match and can differ by several months.

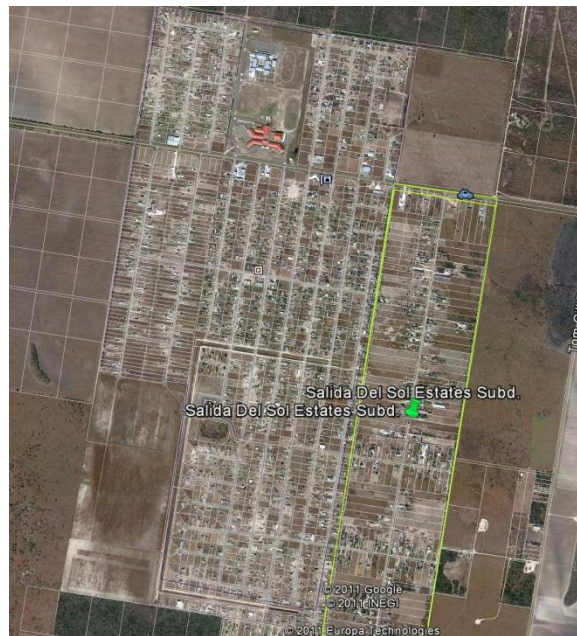
liens appeared within the CAD records for the 75 properties, with at least 4 of these involving the developer.

Overall, the 11% flip rate found in Drake does not signify aggressive developer practices, although it does show that recorded CFDs are prevalent in this particular development. Reviewing our survey findings from the owners who returned the mail survey, although a small return (N = 10), we also see this clearly: three-fourths of the reported purchases involved a developer sale, and all of the developer sales were land-only sales that were seller-financed by Drake. Eighty-three percent of the survey respondents also reported receiving a Contract for Deed at the time of purchase. Lastly, discussions with community organizers indicated that the developer in the past had been reluctant to work with the TDHCA in its CFD conversion program. The extent to which the Drakes have been unwilling to provide buyers with deeds is unknown, but CFDs are widely prevalent in Drake, which supports the need for a CFD conversion program in this community.

**Table 5.8. Land Size and Appraised Value: Drake and Pueblo de Las Palmas**

	Drake		Pueblo de Las Palmas	
	Mean	Median	Mean	Median
Land SqFt	30,521	23,724	22,101	22,007
Appraised Value / SqFt	\$1.22	\$1.14	\$2.26	\$1.64

Pueblo de las Palmas Findings



**Figure 5.6 Pueblo de las Palmas off FM 2221, western Hidalgo County**  
 (The block bounded in yellow is adjacent Salida del Sol, while the subdivision north 2221 around the School is Taurus Park Estates)

Pueblo de las Palmas is a huge multi-sectional development in western Hidalgo County and comprises over 1,000 lots. Salida del Sol subdivision lies on its eastern edge side, and Taurus Park Estates is to the north (See Figure 5.6). Arnoldo Pena and Manuel Chapa (aka Chapa Pena Development) and John Frisby appear to be the primary developers, although we found many transfers between Chapa Pena and Leonel and Maria N. Bazan.<sup>12</sup> There are a number of holding companies or related companies in Mission, Texas, set up by the same individuals that also appear in the transaction histories, such as G & D Financial Services LP, JGF Land Company, and JGF Enterprises LP, of which John Frisby is a principal. Other principal players who appear in the deed records, which may or may not be related to the Pena/Chapa/Frisby players are: All Star Land Co., Diversified Investment Holding Corp., and Anzaldua Enterprises (Jaime Anzaldua). Additional players include Juan Jose Jr. and Jesus R. Carlos Pena both of whom purchased and received many properties in this development from Leonel Bazan.



**Figure 5.8. Developer’s Sales Office, Pueblo de las Palmas**  
(advertising lots with services and “trailers” allowed)

For Pueblo de las Palmas, our sampling frame was 21 streets and every 10<sup>th</sup> CAD record. In this community, almost all of the lots (97%) were sold under special warranty deeds with vendor’s lien. The CAD records we sampled did not show the use of any recorded contracts for deed.

Out of 100 lots sampled, flips via a foreclosure by the seller were found in 45 cases; 39 showed no flips (within the last three recorded title changes), while 16 involved unknown transactions. Of the properties foreclosed, only 3 were consumer sales that flipped back to the consumer-seller. The remaining 42 flips were foreclosures by the developer or a land company, most of which are related to the developers (for example, 23 of the 42 foreclosures were by G&D

<sup>12</sup> One of the returned surveys indicated Leonel Bazan as the seller with some insightful notes. The respondent indicated that there was verbal agreement of a \$20 fee for late CFD payments; the receipt had the interviewee’s name and Mr. Bazan’s name on it; and the interviewee was told that if he or she wanted to pay down the principal the interviewee could not be late in payments.

Financial Services and JGF Enterprises, for which John Frisby, the developer, is a principal owner).

For Pueblo de las Palmas we were able to do a more systematic analysis of the average time it took for a property to flip back to the seller. The time between flips time has been very short: 20 of the 45 lots (44%) flipped in less than a year of the sale; 8 (18%) in 1 to 2 years, and 4 (9%) flipped between 2 and 4 years. Thus we are talking about very short periods between sale and mortgage default. Almost all (43/45) of the flipped properties were resold, most within 3 months. Thus, we saw very short resale periods after short mortgage default periods

For the 16 “unknown” lots (16% of the sample), we were unable to tell what is behind the transaction history in CAD. For all 16 of these lots, an “unknown” grantor transferred the title of the lot to a land or finance company (all but one were to G & D Financial and JGF Enterprises). Ten of these lots were then transferred to a consumer, 5 were transferred to another land or financial company, and 1 was then a transferred to the county. Results of the returned mail surveys from Pueblo de Palmas mirror those of our CAD sampling: with few exceptions sales are by developers and land companies with seller financing.

**In summary, out of 100 lots sold in Pueblo de las Palmas, at least 45% of the lots were foreclosed upon by the developer/finance company/land company, at least 20% were foreclosed upon within a year, and at least 32% were foreclosed upon within 4 years of sale.** Given the limitations of the online CAD records, there could possibly have been even more flips. With such a high rate of flipping, it is probably fair to suggest that in this subdivision developers and investors are very aggressive in pursuing foreclosure against the buyers. Our research project did not delve into why foreclosure is happening so aggressively in this community. This is an area certainly ripe for further research, including the extent to which these aggressive foreclosure practices are common in other model rule subdivisions in Hidalgo and other counties. Such rapid flipping has major implications, of course, for the quality of housing that is erected and the living conditions in which people live. For many buyers, the purchase becomes a form of de facto renting, a point which we return to in the section on renting below.

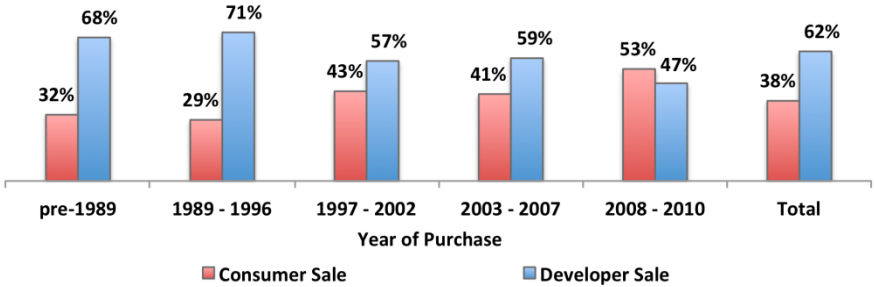
## **SALES BY RESIDENT HOMEOWNERS: CONSUMER-TO-CONSUMER AND DEVELOPER TRANSACTIONS**

Having described some of the developer practices, this section focuses upon some of the main findings with regard to consumer-to-consumer transactions (that is, sales from a prior resident homeowner to a new resident), and compares these with developer sales. In addition to the core survey questions we asked that were related to the purchase of the owner’s current homestead, we also asked the 9.4% of owners who had previously sold another lot questions about how the prior sales transaction had been handled.

We also conducted a series of more intensive telephone interviews with eight purposively-selected residents who had bought their homestead from another consumer or had previously sold a lot. These questions were aimed at getting a better sense of what information the residents had about the process of buying and selling land, what resources they used for assistance with the process, and what barriers they faced when trying their buy or sell their lots.

*Growing Prevalence of Consumer-to-Consumer Transactions*

One of our key findings in this Report is that there is a growing predominance of consumer-to-consumer transactions in older colonias and informal homestead subdivisions (Figure 5.9).<sup>13</sup> As these communities age and residents obtain title to their properties, residents are gradually replacing developers as the dominant actors in land sales. Thus, in colonias and IFHSs developed prior to 1989, we found that consumer-to-consumer transactions have become by far the most predominant form of land sales. As shown in Table 5.9 below, of those we surveyed who recently purchased their lot in a pre-1989 colonia or IFHS, 83% of purchasers bought from another consumer. In contrast, of those who recently purchased in a newer post-2005 colonia or informal homestead subdivision, 79% bought from a developer.



**Figure 5.9. Consumer vs. Developer Sales by Purchase Year**

**Table 5.9. Consumer vs. Developer Sales by Purchase Year and by Colonia/IFHS Age<sup>14</sup>**

Purchase Year	pre-1989 Colonias		1989-1996 Colonias		post-1996 Colonias	
	Consumer Sale	Developer Sale	Consumer Sale	Developer Sale	Consumer Sale	Developer Sale
pre-1989	35%	65%	15%	85%	0%	100%
1989 - 1996	47%	53%	18%	82%	0%	100%
1997 - 2002	60%	40%	48%	52%	7%	93%
2003 - 2007	72%	28%	65%	35%	9%	91%
2008 - 2011	83%	17%	64%	36%	21%	79%
All Years	51%	49%	37%	63%	11%	89%

<sup>13</sup> See also Durst, et al 2012. However, as discussed in the section in this chapter on developer sales, in some communities developers rely on more nefarious or aggressive sales practices, leading to rapid repossession and resale to new buyers, and thereby entrenched involvement in the community’s land transactions.

<sup>14</sup> Note: Newer subdivisions often have a few sales before they hit a “tipping point” of development. Hence for the colonias developed in 1989-1996, there are some sales that took place prior to 1989. See “Settlement Age and Home Tenure” subsection of this chapter for a discussion of our methodology in assigning a “colonia age” for the colonias and IFHSs in our survey sample.

*Limited Bank Financing, Leading to Heavy Reliance on Cash Sales and Seller Financing*

As with developer sales, bank financing plays a very limited role in consumer-to-consumer sales in colonias and IFHSs. As shown below in Table 5.10, only 14% of the resident homeowners we surveyed in consumer-to-consumer sales utilized bank financing, although this was more than buyers used in developer sales (9%). With the lack of bank financing, consumer transactions rely largely on all-cash (21%) and seller financing (63%).

All-cash sales play a much larger role in consumer sales than they do in developer sales, especially in sales involving only the land. In contrast to the 21% of buyers we surveyed in consumer transactions who reported paying all-cash, only 8% of buyers in developer transactions involved all cash.<sup>15</sup> And for consumer sales involving land only, the percent of all-cash sales rose to 25%, compared to only 8% of developer sales. When we examine sales involving the land and house together, we see similar patterns: 17% of consumer sales versus 4% of developer sales were paid in full.

**Table 5.10. Payment Method for Consumer vs. Developer Sales**

	Total Sales				Land Sales				Land & House Sales			
	Consumer Sale		Developer Sale		Consumer Sale		Developer Sale		Consumer Sale		Developer Sale	
	All	Ex	All	Ex	All	Ex	All	Ex	All	Ex	All	Ex
<b>Seller financed</b>	63%	63%	83%	81%	62%	61%	84%	81%	65%	64%	79%	80%
<b>Paid in full</b>	21%	22%	8%	10%	25%	27%	8%	11%	17%	16%	4%	5%
<b>Bank loan</b>	14%	14%	9%	8%	11%	10%	7%	6%	17%	20%	16%	15%
<b>Other</b>	2%	2%	1%	1%	2%	3%	1%	1%	1%	0%	0%	0%

Notes: All = full sample ; Ex = extrapolative sample; bank loans include 4 credit union loans.

We suspect that consumers rely more on all-cash sales because a consumer selling his or her home is typically looking to purchase another replacement home and often cannot afford or take the risk of relying on monthly payments towards the purchase price over an extended period of time. However, even with the large number of all-cash sales, seller-financing is still the primary source of financing in consumer-to-consumer sales. This means that most consumers who sell are unable to receive cash up front for the equity they have built up in their property.

**Example of Consumer-to-Consumer 100% Cash Sale  
May 2012 Interview in Maverick County**

Janie Martinez<sup>16</sup> and her husband bought a lot in Chula Vista roughly 10 years ago from a resident in the community. They found out about the lot from a friend of Janie’s husband. They did not use a real estate agent, and the person who sold the lot to them did not advertise the lot. Janie and her husband knew they wanted a lot but looked at only one before making their purchase. They wanted to move from the northern part of the state to an area closer to the border, and they wanted to “finally settle down in a place of their own.”

<sup>15</sup> Differences statistically significant at the 1% level [p<0.01].

<sup>16</sup> The names of the residents in all of the examples presented here have been changed to respect their confidentiality.

Negotiations were simple: the owner set the sales price at \$10,000 and declined the couple's request for a discount. There was no inspection, appraisal, or lot survey conducted, and no assistance with the transaction from an attorney, title company, or outside party. They purchased from a resident instead of a developer because "that was the offer." They did not know about other lots or ask around for other opportunities. The documents were prepared by the seller. The couple paid for the lot in full at the time of purchase with their savings and got a deed. The lot had electricity, but for one year they fetched water from a neighbor before requesting their own water service. Janie and her husband were quite happy with their purchase and the fact that it was completed "in just one day."

### *High Levels of Informality*

Consumer-financed transactions, in contrast to developer-financed transactions, have much higher levels of informality and an array of related issues, with pervasive levels of unrecorded CFDs, even in recent transactions. With the rise of consumer-to-consumer transactions in older colonias and IFHSs, we have also therefore seen a heightened use of unrecorded CFD in these older communities. Although the sample size is reduced to only 34 cases, between 29% and 38% of those owners who purchased from another consumer from 2008 to 2010 did so with an unrecorded CFD, in contrast to between 9% and 12% who purchased from a developer. A similar percent (29%) of owners who bought from consumers in this time period have a current UCFD.

The reasons for the high levels of informality in consumer sales are due in large part to the fact that most of the consumers in these transactions do not utilize outside legal or title company assistance. Of those we interviewed who had sold a lot before, for example, slightly over half sold the lot without outside assistance from an attorney or title agent. This means that consumers selling their homes commonly prepare the sales documents on their own (if there are any documents), and the buyers rely on the good faith of the seller that all the documents and logistics of the transaction are in order. In contrast, traditional home sales with bank financing in Texas are almost always handled with a title company overseeing the transaction and lawyers preparing the titling and financing documents.

As they venture out on their own to handle land sales, many consumers lack awareness about how to adequately protect their interests and on how to comply with the law. Many of them are outright unaware of the importance of deeds, the importance of checking the status of the title before purchasing a property, and of how to record their documents. Many of the residents surveyed, for example, were unaware what type of title they had received, if any, and if it had been recorded. We heard repeatedly in our follow-up interviews with selected owners that they could have benefited greatly from having more information about the land sales process and access to affordable assistance in preparing or reviewing their sales documents.

Another possible reason for the higher levels of informality in consumer sales is the fact that almost one out of five (18.5%) involve a purchase from a family member. In inter-family transactions, one would expect to see less formality.

The transactions that consumers enter into together can end up quite improvised and informal, ranging from handwritten scraps of paper to typed documents that are cobbled together and even oral agreements. These documents often lack basic information about the transaction

terms, along with the statutory-mandated consumer disclosures, notices, and other provisions required by the Texas Property Code. Examples of some of these documents are included in Chapter Two. Consumers also lack information on the importance of recording their documents in the county clerk records or do not understand the process for recording their documents.

**Example of a Consumer-to-Consumer Sale with Oral Contract for Deed  
May 2012 Interview in Webb County**

Mary Zavala was not looking for a lot—she and her husband were renting—but the opportunity to purchase came up during a chat with her close friends. For \$15,000, the Zavalas could own half the lot along with a trailer with gas, telephone, AC, water, and electricity. They agreed orally to pay \$100 a month with no interest. Mary and her husband asked for a written agreement, but were told they would get the papers later on. They have been paying for 10 years, and still lack a written contract. The only proof they have of the purchase are the cancelled checks stating they are towards the purchase of the property. When the sellers were going through a divorce several years after making the agreement, one spouse argued to the court that Mary and her husband were renters.

Today, the situation remains unresolved, and Mary has stopped making payments for fear of losing more money, even though the Zavalas have already paid \$11,000 towards the purchase price. They also learned it may cost more than \$8,000 to legally subdivide the property. Meanwhile, the seller has removed from the trailer the AC, the battery for electricity, and the gas tank. The Zavalas have, in turn, almost completed constructing a new home on their half of the lot but stopped construction pending resolution of the title. They can't set up utility services because the property is not in their name.

**Example of a Consumer-to-Consumer Sale with Seller-Financing  
May 2012 Interview in Webb County**

Juan Garza and his wife sold their home in 2007 under a written contract for deed to their neighbors. Juan decided to sell after he got a job in the trucking industry and needed to live somewhere more central to his trucking routes. He and the buyers worked out the agreement and drafted the sales papers on their own, without the assistance of an attorney or real estate agent. The buyers agreed to make payments over seven years. In navigating the sales process, Juan said he relied on “common sense” about what the parties expected. The terms of sale provided that if the buyer missed three consecutive payments then Juan would take back the house, and that the house could be remodeled but not rebuilt. The title would be handed over after payments were completed. Reflecting back on the process, Juan said it would have been useful to have information drafting a sales contract and access to a low-cost legal service to assist with the sale.

*Higher Prices, Down Payments, Monthly Payments*

We found that properties sold by consumers have higher combined land and house prices, down payments, and initial monthly payments, than properties sold by developers. Comparing terms in consumer-to-consumer versus developer-to-consumer sales was made difficult by the fact that 42% of the consumer sales involved the sale of the land and house in the same deal, versus 20% of developer sales. However, as seen below in Table 5.11, when we looked at transactions in our survey involving the sale of only the land, we learned that the median down payment for those purchasing land from developers was \$584,<sup>17</sup> and from consumers was

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<sup>17</sup> All dollar figures here are reported in 2012 dollars.

\$2,308. The median land purchase price was \$16,945 for developer sales, versus \$15,666 for consumer sales, while the median price for sales involving the land and house was \$37,825 for developer sales and \$47,520 for consumer sales. For owners who are still paying off their properties (Table 5.11), current monthly payments were smaller among those owners who bought from developers (median \$275), when compared with monthly payments paid by owners who bought from consumers (median \$435). Consumer sales lots tend to be somewhat smaller than those of developers (Table 5.12). In summary, consumer-to-consumer sales generally require larger down payments and monthly payments, which is logical given the common needs of consumer-sellers to quickly liquidate their asset in order to move and buy elsewhere.

**Table 5.11. Purchase Payments: Consumer vs. Developer Sales**

	All Sales (N=885)		Consumer Sales (N=326)		Developer Sales (N=523)	
	Mean	Median	Mean	Median	Mean	Median
<b>Land</b>						
Down Payment	\$17,339	\$16,405	\$16,222	\$15,666	\$17,639	\$16,945
Initial Monthly Payment	\$1,355	\$706	\$3,086	\$2,308	\$889	\$584
	\$281	\$265	\$328	\$291	\$264	\$258
<b>Land &amp; House</b>						
Down Payment	\$47,365	\$40,730	\$53,763	\$47,520	\$43,837	\$37,825
Initial Monthly Payment	\$3,868	\$2,830	\$6,886	\$5,750	\$1,755	\$1,080
	\$482	\$448	\$537	\$536	\$417	\$313
<b>If Still Making Payments</b>	(N=289)		(N=74)		(N=197)	
Monthly Payment	\$353	\$300	\$444	\$435	\$302	\$275
Years of Payment Left	10.3	10.0	9.1	7.0	10.1	10.0

Note: All values are reported in 2012 dollars; the 5% “trimmed mean” is reported for mean values.

**Table 5.12. Land Size and Appraised Value: Consumer vs. Developer Sales**

	All Properties		Consumer Sales Properties		Developer Sales Properties	
	Mean	Median	Mean	Median	Mean	Median
<b>Land SqFt</b>	14,629	11,820	12,892	9,611	17,268	15,226
<b>Appraised Value / SqFt</b>	\$3.16	\$2.84	\$3.64	\$3.55	\$2.62	\$2.09

### *Income Levels*

Since consumer sales involve higher down payments and higher monthly payments, it came as no surprise to us that lower-income buyers are more likely to be priced out of this particular market compared to developer sales. The homebuyers we surveyed who purchased a homestead in a consumer-to-consumer transaction had a higher household income than those who bought from developers. Buyers in the lowest-income brackets who recently bought a homestead (2008-2012), were more likely to buy from a developer versus another consumer. In particular, of the total developer sales in our survey, 61% had a household income of \$1,600 or less, while only 47% of consumer sales had household incomes of \$1,600 or less. Similarly, for those purchasing the land and house, 26% in consumer transactions made \$2,400 or more versus 15% in developer transactions.

### *Owners who Had Previously Sold a Lot*

As discussed above, 9.4% of owners we surveyed had previously sold another lot. Some of our findings regarding these transactions and set of owners:

- ❖ In general, as expected, the owners who told us they had sold a lot previously were slightly older than those who had not sold a lot before. As well as being somewhat older, owners who had sold a lot before have slightly higher household incomes compared to all owners in our survey sample (33% of those who sold a lot have household incomes of \$2,400 or more compared with 23% of who have not sold a lot and have similar household incomes).
- ❖ From these prior sales, 51% of the owners obtained assistance from an attorney or real estate agent. Neither age nor income at the time of the survey statistically influenced whether the owners sought legal assistance in the sales transaction.
- ❖ The prevalence of sales to family or friends was striking: 55% of those who sold a lot in our survey did so to a friend (31%) or relative (24%) versus another third party (45%). Although a larger share of those with higher household incomes at the time of the interview sold to an unknown third party, neither income nor age statistically influenced whether they sold to a relative, friend, or third party.
- ❖ Almost two-thirds (63%) of the prior sellers reported that they provided a deed up front in the sale (including sales involving payment in full as well as seller-financing), 20% provided a CFD, and 5% made an oral arrangement to transfer the property (another 12% did not recall or said “other”). In cross-analyzing with the current household income and age of the prior sellers, we find that age does not statistically influence the title arrangement made, but income does: higher income sellers were more likely to provide deeds while lower income sellers (under \$1,000 monthly) were more likely to use a CFD or oral agreement. The sample size is too small to allow further disaggregation by county.

### **INHERITANCE: AGING HOMEOWNERS AND “CLOUDED” TITLES**

#### *Upcoming Trend: Increase in Clouded Titles From Inheritance without Wills in Older Colonias*

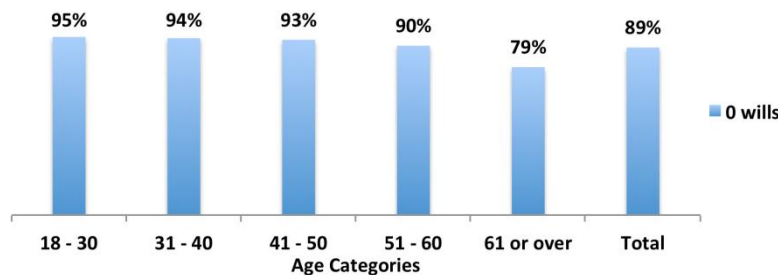
In examining colonia land transactions, while our primary focus was on land sales, we also wanted to make at least a preliminary examination of what happens to titles when colonia homestead owners die—when their homesteads pass onto the next generation of owners. Absent formal measures to pass a homestead title onto the next generation of owners (e.g., via a probated will or deeding the property over before death), the clean title (without impediments) can easily become “clouded”, creating a host of problems.

Clouded title problems created by informal inheritance practices have long been a problem in older lower-income neighborhoods with high rates of homeownership by multi-generations of African-American families. Government officials confronted this issue in Louisiana, Mississippi, and Texas following the last decade of hurricanes when state and local governments were stymied in their efforts to deliver hurricane rebuilding due to widespread clouded title issues created by the passing of title via intestacy. In Texas, for example, approximately one out of five

low-income households applying for hurricane recovery assistance had at least one title issue, impeding the family’s ability to access assistance (Way 2010).

In our survey, we asked a series of questions about inheritance practices and wills in colonias and IFHSs. The information we compiled from the survey confirmed for us that the same clouded title issues that have been found so pervasively in older African-American communities as a result of informal inheritance practices will likely become more predominant in older colonias and IFHSs in the coming two decades:

- ❖ Of the owners we surveyed who have inherited their homestead,<sup>18</sup> 87.5% are living in colonias that started their development prior to 1989.
- ❖ **Very few homeowners in colonias and IFHSs have wills.** Of the owner households we surveyed, 89% **do not have a will**. Older owners are more likely to have a will than younger owners (Figure 5.10 below), but still, 79% of the older owners we surveyed (61 and over) and their spouses do not have a will. In other words, one or both spouses have a will in only 21% of the households we surveyed. Without a will or the deeding over of the property prior to death, the title to these owners’ properties will pass via the laws of intestacy.



**Figure 5.10. Owner-Households with No Wills (Interviewee and Spouse).**

- ❖ Working from a small sample size, of the owners who told us they had inherited their homes and provided us with will information (14), only 21% reported that the deceased family member had a will.
- ❖ **As colonias age, so do the homeowners.** Sixty-eight percent of the owners we surveyed in colonias and IFHSs developed before 1989 are 61 and over, in contrast to 32% of the owners in colonias and IFHSs developed 1989 and afterwards (Table 5.13). Thus, we should expect to see growing numbers of homeowners in these older communities dying and passing on their property to the next generation.

<sup>18</sup> Given the relative small numbers of owners we surveyed who inherited their homes (24), we were limited in the extent to which we were able to disaggregate the analysis by county or by relative or type of colonia and subdivision.

**Table 5.13. Age of Interviewee by Time Period of the Colonia or Subdivision Development (calculated as of when 25% of owners arrived)**

Time Period Colonia Developed	Age of the interviewee					Total
	18 - 30	31 - 40	41 - 50	51 - 60	61 or above	
pre-1989	26.9%	43.3%	47.7%	49.2%	67.9%	50.6%
1989-1996	19.2%	28.4%	34.7%	37.7%	25.4%	30.2%
post-1996	53.8%	28.4%	17.6%	13.1%	6.7%	19.2%

These findings combined lead us to conclude that many more property transfers in older colonias and IFHSs will likely be occurring intestate in the coming two decades as the owners die. Based on trends observed in other communities with high rates of low-income owners passing title via intestacy across generations, we should also thus expect to see a large increase in clouded property titles in colonias and IFHSs in the coming years.

**Example of Intestacy Problems  
Interview of Cameron County Resident, May 2012**

Albert and Gloria García<sup>19</sup> died 10-14 years ago without a will, passing their homestead via intestacy to their seven adult children. The seven siblings agreed that the second to youngest sibling, Mary, would be able to stay in the home since she had been the caretaker for their mother and was the only single sibling. Later, three of the siblings changed their mind and decided they wanted to sell the property to receive their share of the proceeds from the sale. They filed a lawsuit and litigated the matter until they ran out of money and eventually titled the property over to Mary.

Under Texas intestacy laws, when a homeowner dies and there is no surviving spouse, all of the children of the deceased (including those from previous unions), and their descendants, inherit the homestead, becoming “tenants in common”—joint owners of the property. Tenancy in common is generally a substandard and unstable form of ownership, often leading to property management challenges and disputes over ownership. Tenancy in common ownership can also lead to deplorable living conditions with little incentives to make home improvements and investment. We also suspect that it may be one of the reasons for property abandonment, due to the difficulties of selling the property and obtaining loans or government assistance for home improvements (Way 2010).

*Types of Clouded Title Issues*

Through our survey, we identified a number of additional areas that will be likely drivers of clouded titles in colonias after the current generation of owners die:

<sup>19</sup> The names of the residents in all of the examples presented here have been changed to respect their confidentiality.

### Children from Prior Relationships

Three-quarters of respondents in our survey were married or lived in a common law union. At death, their property will be assigned under intestate succession laws unless they have a will. Intestate inheritance presents special challenges when the deceased homeowner has children from multiple relationships. Of the owners we surveyed, 23% (146) of the homeowners who are currently married (formally via a marriage certificate or through a common law union) have children from prior relationships, and 42% of these owners have three or more children from the prior relationships. The children from the prior relationships all stand to inherit an interest in the property. If the homestead is part of the community estate (which is generally the case when a married couple purchases the homestead together), the children from the prior relationships will inherit a one-half interest in the property when their parent passes away while the surviving spouse receives the other half interest. If the children are also deceased, then their descendants inherit an interest, and so on. As anyone can imagine, this situation—where children from a prior relationship share an ownership interest with their stepparent—is ripe for conflict.

### Divorce

We found that almost one in ten of our surveyed homestead owners had gotten divorced since becoming property owners, yet of these, 13% did not obtain a divorce decree from a court. For this small subset of cases, the failure to obtain a divorce decree means that both ex-spouses are still considered to be legally married and remain on the title to the homestead if they originally purchased the property together, even if they intend for only one of the ex-spouses to remain the owner and to occupy the property. Thus, for example, if the ex-wife is living on the property with her children and dies and there was no divorce decree, the ex-husband automatically inherits at least a half interest in the property via intestate succession (assuming the homestead was community property), and will inherit all of the property if the deceased wife has no children from another relationship.

### Probate Costs are a Barrier

Because so few families in colonias and IFHSs have wills, we conducted follow-up telephone case interviews with a very small number of households who were confronted with probating of a will. Of those who had a deceased parent or spouse with a will, we found several instances where the household did not probate the will because of the costs associated with the process, as well as cases where family members simply misunderstood the process and its impact on the estate.

For low-income residents in Texas, a major set-back of having a will is the cost associated with probating the will, which can range from \$1,500 on up, depending on the complexity of the probate process. Unlike middle- and upper-income beneficiaries who usually have the resources to cover these costs or can liquidate the inherited property to cover the costs, the children who inherit their parents' home in colonia or informal subdivision are often poor themselves and are living on the lot and expect to continue to be able to do so. Among our follow-up case interviews of several current homestead owners with wills, most were unaware of these downstream costs.

**Example of Failure to Probate a Will**  
**Interview of Maverick County Resident, June 2012**

Julia Zapata's mother obtained a will with legal assistance from Texas Rio Grande Legal Aid. After Julia's mother died, she did not probate the will because she could not afford the costs. Julia would like her daughter to inherit the homestead after Julia's dies, but she lacks the money to obtain a will or change the name on the title from her mother's name.

*Informal and Alternative Arrangements*

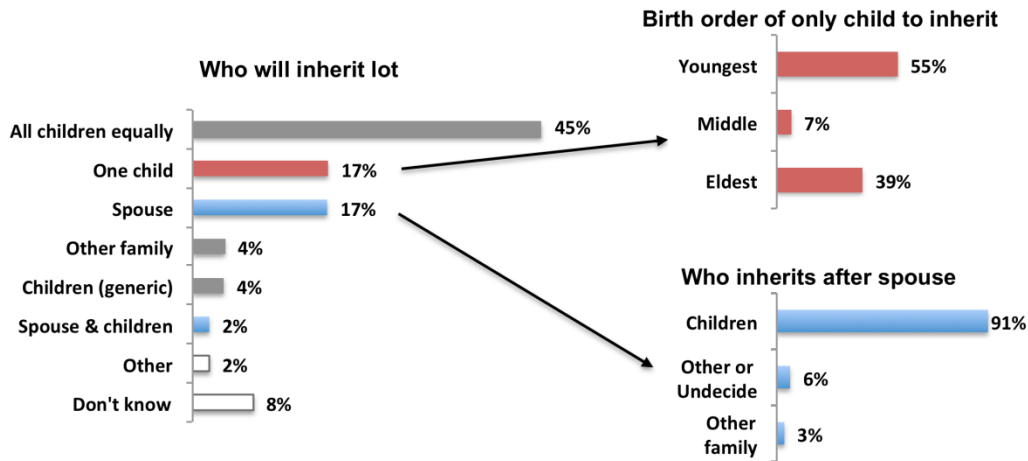
Almost half (44%) of the owners we surveyed without a will have made informal or alternative plans regarding the inheritance of their homestead. These plans cover a spectrum of practices, from oral "understandings" about which child will occupy the home after the parents' deaths, to the gifting of property to an adult child during the parent's lifetime.

**Example of Gift Deed as an Alternative to A Will**  
**Interview of Hidalgo County Resident, June 2012**

Just before Johnny Mendoza's father passed away, his parents (who did not have a will) deeded the property over to him. It had been the understanding in his family that Johnny would receive the property because he was the youngest child, had never gotten married, and was the primary caretaker for his elderly parents. His mother is still living, and he still considers the home to be his mother's although it is now titled in his name. Johnny plans to deed the property over to his nephew, who is living with them, in about ten years. His family has an informal agreement that the property will remain within the family. As he told us, "God blessed us with the love and understanding we have for each other."

In this example, the informal arrangement of deeding to another is being respected, but we suspect that this is often not the case and that legitimate beneficiaries (siblings) may change their minds when the final parent dies (as in the García case mentioned earlier). Evidence elsewhere strongly supports this (Ward et al 2011).

Another important issue we discovered is that families' understanding of inheritance laws and their intentions regarding inheritance often conflict with the actual laws. For example (illustrated in Figure 5.11, of the owners who told us that their children would inherit their property, 17% said only one of their children would inherit (55% of these owners said the youngest child would inherit). Unless the owners take more formal steps to transfer title prior to their death, or take out a will naming the beneficiary, the intestate succession laws will trump their informal plans if contested by other children or beneficiaries.



**Figure 5.11. Owners Expectations Regarding Lot Inheritance**

#### *Additional Findings on Wills and Inheritance*

- ❖ In Hays County (Central Texas), where a lower proportion of residents were Anglo, 43% of households had at least one will. Across all counties, a larger proportion of those who had been divorced (23%) or who were widowed (27%) were also more likely to have a will, as were those who had received their property via gift (16%).
- ❖ **Of all owners we surveyed who reported that they inherited**, the year of inheritance was spread across different time periods, but 44% of these cases occurred post-2002.

### **INFORMALITY AND RENTING IN COLONIAS: A RISING TREND?**

Traditionally, colonias have been associated almost exclusively with ownership (Ward 1999)—most rental housing supply is usually found within the central city or inner suburb areas, closer to the workplace, amenities, and access to public transportation. Renters have generally been younger than owners, and have been more likely to be singletons. Often they are more recent arrivals to the city or even to the country in the case of international migrants. Thus, the academic literature widely emphasizes renting as a city—often central city—phenomenon tied to the life course of younger adults. Given the location of colonias, buried as they often are in rural hinterlands, several miles from the city, we have historically seen minimal instances of rental housing in these communities.

An alternative to renting, especially for recent arrivals to an area, is to live *arrimados* (sharing) with relatives. With Mexican family traditions and customs this type of arrangement is quite common. However, the identification of *arrimados* is rarely picked up in surveys, and is typically not associated as a form of rental housing.

In light of these trends, we expected to find a very small proportion of renters in our survey. However, that turned out to not be the case. In the eight counties we surveyed, 18.4% (219) of those we surveyed were living in homes not owned by the occupants, a significant number relative to prior research findings. Of these, 87% (190) were renters, the remainder (29) being those who were living rent free from an owner (usually a relative) who was living elsewhere (i.e.,

not on the property).<sup>20</sup> As Table 5.14 shows, renting is important in all Texas counties, usually running somewhere between 14% and 19% of those homes we surveyed, with slightly higher rates in Hays County (21.3%) and lower rates in the Maverick County (10%). Renting is found mostly in the older colonias: almost one half of renters we surveyed lived in pre-1989 settlements, with only 13% living in post-1996 settlements.

**Table 5.14. Renters and Concessions (Rent-Free Living Arrangements) by County**

County	% Owners	% Renters	% Rent Free	Total N
Cameron	81.6%	13.8%	4.6%	174
El Paso	81.5%	18.5%	0.0%	173
Guadalupe	77.8%	16.7%	5.6%	72
Hays	77.3%	21.3%	1.3%	75
Hidalgo	83.3%	15.9%	0.9%	227
Maverick	87.4%	10.2%	2.4%	167
Starr	78.2%	18.5%	3.2%	124
Webb	79.9%	16.8%	3.4%	179
<b>Total</b>	81.6%	16.0%	2.4%	1191

At the outset, our survey asked questions about the head of the household and whether or not the head of household owned the lot. If the respondent was not the owner but declared that they rented or lived on the lot rent free as a concession from a non-resident owner, then we noted the fact and skipped to a final section of the questionnaire that contained a few specific questions about the tenants which form the basis for much of the following discussion below. Had we anticipated finding quite so many renters or non-owners, we probably would have designed a more extensive and separate survey instrument for these cases.

#### *Renter<sup>21</sup> and Non-Owner Profiles*

Apartment buildings and multi-family housing structures for rental are rare in colonias (although in other recent studies [Durst et al 2012] we have begun to observe a small number of lots turned over to multi-family dwellings—a point to which we return below). Almost four-fifths (78%) of the renter households reported there was only a single rental unit on the lot, a further 15% reported two rental units, and only a small handful reported (N=14, 8%) three or more rental units. Renting, therefore, usually consists of single occupancy homes that have been vacated and left by the owner, rather than being developed for the purpose of renting.

Few renters paying rent—only 30%—have a rental contract with the landlord. Most rent informally and may or may not receive receipts for their rent payments. The tenants we surveyed usually pay rent to the owner directly (90%). The average rent (5% trimmed mean) paid was \$375 per month, with smaller units costing less, as one would expect. The average rents broken down by bedroom count were: \$281 for a one bedroom; \$339 for 2-bedroom; and

<sup>20</sup> Of these 190 cases, 150 come from the extrapolative colonias, Of the 29 living rent free from an owner who does not reside on the property, 21 are extrapolative and 8 non-extrapolative. Overall one-fourth (24%) of the respondents in these cases noted that there is more than one rental unit on the lot (other than their own).

<sup>21</sup> These renter figures include only those survey respondents who reported paying rent versus those staying rent free.

\$422 for 3-bedroom accommodations.<sup>22</sup> In renter households, it is rare for there to be a household head with no income (only 15%).

The lack of income is a feature more common with owners (24%), more of whom are elderly, as well as those living rent free (32%) as a concession. Twenty-seven percent of renters have two or more workers, compared with 32% of owners and 14% of those living rent free. Total household income categories for renters are somewhat lower than for owners (40% of renters versus 31% of owners earn less than \$1,000 per month), although these are not statistically significant differences.

Two further differences between renters and owners are age and housing tenure. The renters we surveyed are much younger than the owners: 31% are 18-30, and 37% are 31-40 (compared to 8% and 22%, respectively, for owners). At the other extreme, only 8% of renters were over 61, compared to 26% of owners we surveyed (highly significant [.000 significance level]). Only 16% of renters were older than 50, while almost half of owners were. Not surprisingly, these profiles reflect that most owners are further along in their life course and have lived in the neighborhood for a longer time. What was somewhat of a surprise was our finding of a number of elderly renters (although still a relatively small number (8%)). As we describe in the section on inheritance and informality, the aging of owner populations in informal settlements is an emerging policy issue. The impact of having an aging population, including elderly renters, in these areas merits further research.

Most renters have lived in their settlement for a relatively short time: three to four years on average. The median year of arrival for renters was 2010, compared to a 1997 median for owners). These findings are consistent with other research findings that portray renters as being younger households at the earlier part of their life course. For many of these younger renters, renting provides a transition to ownership or flexibility to move between different housing units. Ownership in colonias tends to be for the long term, if not “forever,” while renting is much more short term—or at least that has been the traditional pattern.

### *Why is Renting in Colonias and IFHSs on the Rise?*

As discussed above, our finding that colonias and subdivisions house a significant minority of renters was a surprise given that prior research had suggested that renters were largely absent from colonias, and our assumption that the distant rural location of these communities would deter renters. A parallel study (Durst et al, 2012) conducted in colonias outside of Rio Grande City, which specifically compares housing improvements and socio-economic profile changes over a ten-year period (2001-11), also found a rise in renting associated with generalized neighborhood upgrades, as well the construction of a small number of apartment buildings with 5-15 rental units. While further work is required to understand the dynamics of this new rental housing supply, anecdotal evidence from the Rio Grande City study suggested that the rental units may be local investments by entrepreneurial families who live elsewhere in the community. However, as we observed earlier, the norm for rental housing is a single dwelling unit.

Tentatively, we hypothesize that the rise in renting we observed is a product in part of stagnation in the colonias housing market. Elsewhere (Ward et al 2005; Durst et al 2012), we have described how, even in low-income colonias, homes have considerable exchange value. However, the absence of external financing mechanisms and thus the on-going need for home sales to be through seller-financing (which means the seller cannot receive the sales price up

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<sup>22</sup> 5% trimmed mean is reported for averages in the renter section to forego outlier influence.

front for the homestead), depresses the effective demand. This is especially the case on the heels of financial crisis that led to a tightening of loan requirements, affecting both low- and lower-middle-income families the most. Moreover, as other sections of Chapter 5 suggest, the opportunity to sell a property may be stymied by inheritance and succession conflicts and the reemergence of “clouded” property titles. Similarly, we report below that there is evidence that some homes are being abandoned or are being left unoccupied. These features suggest that owners are frequently unable to sell their property such that they face four choices: (1) find a buyer who can pay cash up front, but take a huge loss by selling way below the actual value; (2) stay put and suffer the opportunity costs of not being able to move physically; (3) walk away from their investment, which may be less of a hardship in the case of vacant or unused lots but could be a drastic decision when there is a dwelling unit on the lot, no matter how modest); and (4) move out but find an alternative use for the house or the land.

We believe this latter option is leading to a rise in the presence of non-owner households, the majority of whom (87%) are renters. Renting provides a steady stream of income for those who are obliged to leave the neighborhood (for reasons such as work relocation, household break up, etc.), while still allowing them to hang onto their investment.<sup>23</sup> We also hypothesize that families faced with intestacy problems as a result of relatives who cannot come to an agreement about the disposition of the property will turn to rental in order to gain some benefit from the property (Ward et al 2011).<sup>24</sup> The point is that, faced with the inability to dispose of the property, renting even in these distant locations becomes an option.

Moreover, as settlements “age” and as children reach adulthood, marry, and move out of the parental home, the adult children have a number of choices: move to an apartment in the city, share the lot with their parents but move to another part of the lot and erect a separate dwelling, or move to another dwelling opportunity in the same settlement in which they grew up. We believe that this latter option will also become increasingly common as colonias “mature.”

### *Monthly Rental Costs*

When we compared the monthly costs of renting versus purchasing for those home owners that continue to make monthly payments in our survey sample, we found that the costs are similar (Table 5.15). The monthly cost of renting falls squarely between consumer-to-consumer and developer sales. Although, this is an imperfect comparison because, in many cases, the object of payment is different (a dwelling for rent versus just a lot). Many of those buying from a developer especially will be buying just the land and will have additional housing and utility expenses. Comparing the number of years that owners vs. renters have lived in the current property, it is clear that renters are relative newcomers to their areas (3.1 years compared with 14-16 years living in the home for those who buy).

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<sup>23</sup> We observed several dwellings in Pueblo de las Palmas (Hidalgo) that were “for rent” which almost certainly households who, for one reason or another could no longer occupy the home, but needed the income to continue to meet their land repayments. Earlier in this chapter we saw how aggressive “flipping” of lots back to the developer appears to be widespread in that colonia. For those who only occupy their lots for a short while and who live in temporary homes (trailers and campers) that can be moved off site in the event of repossession or “flipping”, this route to home ownership is de facto renting.

<sup>24</sup> Albeit in a Mexican context where similar inheritance conflicts have been observed.

**Table 5.15. The Relative Current (2012) Monthly Costs of Renting versus Buying**

	Consumer Sale			Developer Sale			Renting		
	Mean	Median	75th percentile	Mean	Median	75th percentile	Mean	Median	75th percentile
<b>Home Tenure Years</b>	14.1	12.0	21.0	16.8	16.0	24.0	3.1	2.0	5.0
<b>Monthly Pay</b>	\$444	\$435	\$574	\$302	\$275	\$350	\$375	\$350	\$475

Note: The sample size for consumer-to-consumer and developer purchases includes only those owners who continue to make monthly payments on their homes and lots.

*Renting to Own or Owning to Rent?*

Those cases where people set out to own but find that they cannot afford to make the payments and face rapid repossession without compensation or recovery of their investments are tantamount to informal renters. Earlier in this chapter we described the extensive “flipping” of lots back to the developer in the case of Pueblo de las Palmas (Hidalgo), one of our special case studies. We observed frequent flipping in Maverick County as well. In that subdivision, as well as in several new subdivisions, we occasionally observed properties that were “for rent,” and which may be developer repossessions or are dwelling units of householders who, for one reason or another, can no longer occupy the home, but are hoping to rent in order to continue to meet their land payments.

However, we also observed a large number of lots with extremely poor housing conditions where households are purchasing a lot through warranty deeds with vendors’ liens and are living in homes (trailers and campers) that can be moved off site in the event of repossession or “flipping.” The costs of these residents’ purchase, even if it is for a year or two, is on par with the cost of renting. While the residents’ aspirations may be to eventually own their lot, the reality of informality may lead to their having to walk away from the lot or being forcible removed via foreclosure. Yet, in contrast to renters, these residents do not receive the legal protections that tenants receive under state law, such as the warranty of habitability and protections against substandard living conditions.



**Figure 5.12. Shoddy Housing: The Shape of Informality to Come – Owning to Rent?  
Photo of Lot in Puebla de las Palmas**

(Note the camper home that can be removed, as can be the washer and fridge. The successful self-help house in the background is not the rule in this community.)

The points described here and which relate to communities like Puebla de las Palmas and which do not break out of the survey analysis, remain largely speculative at this stage. Some are hypotheses born of our observations in self-help low-income settlements elsewhere ([www.lahn.utexas.org](http://www.lahn.utexas.org)), and need to be more fully researched before any firm conclusions can be arrived at.

#### *Follow-up Mail Survey of Owners Who Rent or Lend their Properties*

As part of our attempt to understand more about renting trends in colonias and IFHSs, we sought to reach out to a number of property owners where our survey had identified renter households to be present. Our selection of these interesting cases was purposive, and designed to gain further insight about why an individual owner had chosen to rent or let (rent free) his home to a relative. Unlike some of the follow-up “interesting” cases described in other thematic arenas discussed in this chapter (in which we already had owners’ phone numbers from the full survey), we were constrained in our ability to locate and interview these landlords. Given that these were “absentee” owners, we had only been able to gather modest data about the tenants. We deliberately chose not to ask the tenants for surrogate information about the owners, since renters are very uneasy about giving information about their landlords for fear of repercussions later. Having the lot address, most times we were able to pull up the owner’s address from the CAD, but obtaining a telephone number and contacting the owners was inevitably going to be intensely problematic.

Of the 190 owners who rent in our survey sample we created a database with their addresses from the CAD. This immediately gave us a data about where these absentee owners live. Not surprisingly, perhaps, the large majority live in the same county as the rental property (86%). In Guadalupe and Hays, 13% and 19% respectively live in an adjacent county, but this probably reflects the geography of those counties and the fact that a number of the owners live in San Marcos or Austin (both different counties).

With the intention of surveying these absentee owners, we developed a short mail-back survey, which we sent to 219 addresses (190 were owners renting their property, 29 were letting their property rent free). The survey to owners who rent (see Appendix C.vii.a&b) comprised 20 short questions and sought to confirm ownership of the lot in question, reasons for renting or letting rent free; to whom (personal relation or not); whether the owner had ever occupied the lot, and if so, when had they vacated the property; and most importantly, the rationale for renting and whether or not they had tried to sell the lot/home. We also invited them to phone in and give us a number and time if they preferred for us to complete the survey over the phone.

The survey went out in late July with a two-week window for return and, while we hoped for a modest response,<sup>25</sup> we saw this as a pilot to gauge whether we should dig deeper using mail back surveys for both this issue (owners who rent) as well as for the issue of abandonment and vacant lot owners (see below). Several responses came in outside of the window, but in the end we received 12 positive responses (two through phone interviews), and 16 surveys were returned marked “addressee not known at the address and no forwarding address available.” A few others called to the phone number they were given, and two agreed to be interviewed. Allowing for the known bad addresses of the returned envelopes, this is just over a 5% response rate—better than the mail backs in the original survey, but still disappointing given the survey’s brevity.

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<sup>25</sup> Five to seven percent is considered normal for mail back surveys without a second follow up.

Nevertheless, the survey gave us a number of responses akin to the telephone interview materials that we have discussed in previous sections of the chapter. Again, we emphasize that these are preliminary insights only and cannot be assumed to be representative of the universe of owners who rent out or let their homes as concessions.

#### *“Interesting Case Studies” of Owners who Rent Out their Homes*

Three respondents had transferred their lots and so were no longer the owners. Of these transfers, one was a gift to a relative who needed a home, and the other two cases were both 1994 sales, had a lapse of several months before finding a buyer, and were undertaken through unrecorded contract for deed. Of the remaining nine cases, seven were renting, (with two owners unexpectedly stating they lived on the lot sharing with kin or renting part of the property). Most owners were absentee owners; of these around half had previously lived on the site, and almost all continue to visit the site fairly regularly. Several had tried to sell but couldn't, while those that hadn't were not interested because they had close kin living there and saw it as an inheritance for them. One woman who has a will, plans on leaving it to one of her sons.

On paper, the respondents were quite articulate about why they wished to rent: most were concerned about the house sitting vacant and thereby being vandalized or trashed. By the same token, their major concerns over renting were those of having bad tenants who do not care for the property or who don't pay and abscond. Most of the renting was relatively recent (the last 2-3 years), with one long-term rental since 1994. Almost all of the owners exclusively paid the property taxes, while the utilities were paid by those who occupied the house, or were shared with the owner in the cases where the owner also lived on the lot.

Most had never tried to sell the lot, although almost half said that would like to do so in the future. The two who had tried to sell before could not find a buyer to pay what they felt the lot/home was worth. One respondent is not absentee, but lives on the lot and both rents out the home and shares it with her granddaughter, who looks after her in her old age. In her words, “They (the other occupants) take care of me. Without them, I would be in a nursing home.”

Few of the respondents had heard of Texas Rural Legal Aid before which was rather a surprise to us since TRLA is the major legal services provider to the poor in these areas.<sup>26</sup> Four out of nine respondents had a will—considerably higher than the survey average.

What are the take-home points from these few vignettes? First, a few of the owners are managing to sell on their lots, although these respondents are a biased sample since they are still listed as the owners in the CAD records and may have been motivated to clarify that, whatever the record stated, as far as they were concerned they had sold. (In one case the respondent stated that he had sold the property in 1994 under an unrecorded CFD which had only been recorded as a conversion in 2010 when the debt had been paid.). Others might like to sell if a buyer were found to pay the going price. Second, others, even those that might like to sell, have entered into arrangements with relatives and even in these cases there is some suggestion that the owner sometimes also resides on the lot as well although it was not clear whether this was her sole home or whether she had another home elsewhere. Such “mixed” or “sometime residence” may also be tied to plans to leave the lot to their close relatives when they die, and just under one-half stated that they had a will. Third, those that are straight-up-and-down landlords do so not only as a source of income, but also to “protect” the lot and property from abandonment and vandalism, although they also complain about bad tenants. In short, as

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<sup>26</sup> In retrospect this would have been a good question to have included in the original survey.

we anticipated, renting is one partial, and often a mixed-response option for absentee owners. It would be interesting to see how these options might play out if the market was more conducive to sales.

## VACANT LOTS AND LOT AND HOME ABANDONMENT

In preparing the household survey, we had anticipated that a proportion of the lots in each colonia and subdivision would be unoccupied (i.e., vacant lots). The detailed lot log template we developed in order to guide our random household selection thus recorded the number of vacant lots that fell into our random sample as well as the total number of homes visited, no responses, replies, and refusals. This methodology is described in greater detail in Chapter 2 and in Appendix A.i.

Entering into this research project, we knew from earlier surveys that vacant lots were a common feature of colonias (Ward 2001), and that there were a variety of reasons to explain non-occupancy and absentee lot ownership (Ward and Carew 2001). A recent follow-up ten-year monitoring study of those same colonias, along with several additional subdivisions, has allowed us to assess changes in lot vacancy over the past ten years (Rojas et al 2012). The ten-year study showed that overall occupancy in these colonias increased cumulatively by around 13% from 2000-2010, and vacancy levels were reduced to less than 30% in all but one of the 22 settlements analyzed. That study also showed that occupancy was not a linear process, and that some lots that were occupied were later abandoned.

Returning to the current study, the lot logs from the surveys (Appendix A.v.b) show that 21% of the lots we visited (6,088) across the 10 counties were vacant (i.e. unoccupied) lots. A number of these lots showed evidence of having once been occupied and since abandoned. Unfortunately, while we had anticipated the widespread existence of vacant lots, we did not anticipate that abandonment might also be an important feature in lot vacancies and did not gather additional information on lot abandonment during our first round of surveying in January in five of the border counties. In the later surveys we conducted in Maverick, Hays, and Guadalupe counties, we therefore amended our lot log protocol to gather more specific information about lot vacancy and abandonment.

### *Classification of Lots in the Later Surveys (Maverick, Hays and Guadalupe)*

The lot log protocol we created asked the surveyors to assign one of the following codes to each lot that appeared to be unoccupied:

- ❖ **'VT'** was used to describe a property that appeared to be a vacant lot without a structure on it.
- ❖ **'US'** was used to identify an unfinished structure—a structure that had been started but never finished (e.g., missing windows/doors, no roof, etc.).
- ❖ **'AS'** was used to characterize an abandoned structure—a situation in which a completed structure was present but was clearly abandoned (i.e., there were no signs that anyone was living on the lot and no signs of residents planning to return). Some of the combined features we observed with lots that received an 'AS' demarcation included broken windows, graffiti, roof caved in, lack of furniture inside the structure, etc.
- ❖ **'UH'** was used to signify a completed home that appeared to be unoccupied but not abandoned (e.g., grass overgrown, sand/dirt piled around the door, windows covered with fabric, but home still furnished). These lots differed from abandoned lots in that there were signs that the owners planned to return. This code was created with migrant

workers in mind who are out of town for months at a time but usually plan to return to their homes. ).

*Summary Findings for Lot Vacancy and Abandonment in Guadalupe, Hays and Maverick Counties*



**Figures 5.13\* Recently Abandoned Homes, Guadalupe County**

Of the 1,823 lots we visited in Guadalupe, Hays, and Maverick counties, we estimated that 27% (486) of the lots were unoccupied (including vacant lots, unfinished structures, abandoned structures, and unoccupied homes). See Table 5.16. Maverick County had an especially high proportion of unoccupied lots: 32% (349) lots. In Hays, nearly one quarter (24%; 90 lots) were unoccupied, dropping to 12% of lots (47 lots) in Guadalupe County. In all three of these counties, we came across several instances of what appeared to be abandoned properties: 4% of all the lots we visited in Maverick and Hays counties. These abandoned properties had structures on them but no evidence of anyone living in them. Although the proportion of vacant

lots was considerably lower in Guadalupe County than in either Maverick or Hays, the actual proportion of abandoned or unoccupied homes relative to unoccupied lots was much higher (53% of all vacant lots).

**Table 5.16. Vacant and Abandoned Lots Analysis: Maverick, Hays and Guadalupe Counties**

County	Names of Colonias Visited	Number of Lots Visited	Total % of Unoccupied Lots for surveyed colonias and sub-divisions (# of Unoccupied Lots)*	Lot Type as % of Total Unoccupied Lots per County (# of Lot Types)			
				Unfinished Structures (US)	Abandoned Structures (AS)	Unoccupied Homes (UH)	Vacant Lots (VT)
Guadalupe	Country Acres, Park at Creekside, Birmensdorf, Brookhollow Estates	384	12% (47)	2% (1)	32% (9)	32% (15)	47% (22)
Hays	Santa Fe Run, Green Pastures	369	24% (90)	7% (6)	18% (16)	11% (10)	64% (58)
Maverick	Deer Run 2, Deer Run 4, Deer Run 5, Las Quintas Fronterizas, Chula Vista School Block, Chula Vista 1-5, Loma Linda 1	1,078	32% (349)	9% (30)	13% (45)	10% (34)	69% (240)

\* The numbers of unoccupied lots from Guadalupe, Hays, and Maverick counties represent the reconfiguration of unoccupied structure surveys conducted in March of 2012.

We were unable to explore why these lots appear to be abandoned, but find this issue of what drives households to abandon their lot very interesting, especially given the value of these lots and the fact that the lot may be a household’s most valuable asset. At the junction, we can only speculate as to what the triggers are for lot abandonment. Some of the possible reasons could include clouded title issues that prevent resale and a decision to move somewhere else for a job and hold onto the lot for a future move back to the community. Several additional typical examples of lot abandonment are displayed at Appendix D.vi.

#### *Additional Analysis*

In our Phase Three analysis of the survey data, we resolved to undertake additional photogrammetry and archival research to dig deeper into lot abandonment and vacancy in these three counties. The discussion of this additional analysis follows. Part of the reason for this deeper analysis was that we recognized that our assignment of the codes discussed above was quite subjective. We therefore wanted to find other factors to help us delineate whether a lot had actually been abandoned or was otherwise unoccupied. By mapping the exact locations of these vacant and abandoned lots we began to build a database that would gather additional information related to current ownership, property tax status (delinquent or up to date), past utility usage, and, we hoped, address that might provide the basis for future surveys of former occupants. Ultimately the aim is to better understand the drivers of lot abandonment, although this will form the basis follow-on research in 2013, and is not reported on here.

As discussed above, we had information about both lot vacancy and abandonment for only three different counties (Guadalupe, Hays, and Maverick). Our Phase Three lot abandonment

analysis included ten of the 66 settlements that we surveyed in these counties. More than half (1099) of the 1,822 lots we examined were located in colonias of Maverick County. For Hays, we examined 351 lots, and for Guadalupe County we examined 372 lots.

After constructing databases to reflect the occurrence of lot vacancy and abandonment across the three counties, the data were plotted using aerial imaging from Google Earth Pro, often alongside maps from online county appraisal district websites. Before representing each vacant/abandoned property lot on Google Earth maps, it was necessary to corroborate survey data with corresponding CAD data to ensure triangulation with lot location and property ID data. Almost five hundred (486) unoccupied lots were painstakingly matched and then mapped using drop-down pins in Google Earth.<sup>27</sup> Four different pin colors corresponded to the different classifications as previously discussed: yellow pins represented vacant lots (VT); royal blue pins represented unfinished structures (US); green pins represented abandoned structures (AS); and light blue pins represented unoccupied homes (UH). For examples of this aerial imaging of unoccupied lots, see Appendix D.vi.

Once plotted successfully, our goal was to build a database for each case that would include the purported owner's address in the CAD records that might allow us to subsequently survey absentee lot owners by phone or mail, to gather property tax data (to assess whether the owners were still making tax payments), and where possible, the last date of consumption data from utility companies. Time constraints ended up preventing us from following through on the latter, and the low returns from mail-back questionnaires in the main survey and from follow-up surveys of landlords gave pause to whether that would be a worthwhile strategy.

However, we did manage to gather some partial information from the county tax assessor offices. In both Hays and Guadalupe counties, surveyors were often unable to accurately identify the property address of vacant lots such that we were hampered in many cases in tying the lot log data to a property address in the tax assessor records. As a result, the information we gathered is a sample only and is probably not representative. In Maverick County where we generally had better addresses to work from in the lot logs, no online tax data was available, so we sent the county tax assessor a listing of everyone other address in our sample and requested the data be faxed or mailed back us.<sup>28</sup>

**Table 5.17. Vacant and Abandoned Lots with Property Tax Arrears in Maverick, Hays and Guadalupe Counties.**

County	# Cases reviewed for which data were found	% (&N) of cases found to be in arrears	# of lots in arrears	Average arrears amount (all) \$	Average # of months since last payment	N of all vacant lot cases reviewed that were abandoned
Guadalupe	40	8% (3)	2	753.33	2	8
Hays	14	7% (1)	0	638.86	N/A	3
Maverick	88	26% (23)	22	578.73	36	12
Total	142	19% (27)	24	656.97	19	23

<sup>27</sup> This analysis was undertaken by graduate research assistant Adam Torres, and builds upon the methodology elaborated in an earlier study at the LBJ School (see Danielle Rojas 2012).

<sup>28</sup> We would like to thank Irma Frausto and the staff at the Maverick County Tax Assessor Collector Office for complying with our request.

The data in Table 5.17 are incomplete and should be read as tentative and initial examination into abandoned and vacant lots in these three counties.<sup>29</sup> However, the data suggest that many of the lots we were able to track in the tax assessor records are not tax delinquent. Much higher rates of delinquency appear in Maverick County. Across the board, the average amount of tax arrears is quite high (\$657). In Maverick, most of the tax delinquent lots are ones we flagged as being abandoned in our survey. On average in Maverick County, at least three years have passed since the last property tax payment, suggesting that here at least there is a significant problem of lots becoming locked out of the market until they are foreclosed upon by the county.

In the coming months, we propose to develop this analysis further by triangulating these data with utility company information for abandoned lots, and probably by widening the analysis with revisits to lots in some of the colonias and informal homestead subdivisions that we previously surveyed. At this stage, we still know too little about the extent to which vacant lots are indeed truly abandoned and what triggers the abandonment.

## CONCLUSIONS: THE REPRODUCTION OF INFORMALITY

While chapters three and four provide the core analysis arising from the TDHCA request to provide estimates about the use of Contract for Deed as a titling mechanism in colonias and informal homestead subdivisions, this chapter – indeed the whole of our Phase Three analysis - seeks to offer a better understanding of the broader dimensions of informality that underpin tilting and property transfers in these communities. Our reasons for proposing and undertaking a Phase Three analysis in the first place were threefold. First, the nature of informality and informal social processes are intrinsically interesting intellectually, and are at the forefront of much current academic research. Indeed this is research in which the principal investigators and several of our graduate students are already fully engaged. Second, is that scholars and policymakers are beginning to better understand how informal practices often appear to morph over time, and that they do so in ways that often lead to the **reproduction of informality** downstream. One example here is the way in which formal titling programs can give full title to homeowners, only to have those titles be thrown into disarray and become “clouded” by intestate property succession, or by informal arrangements among family members, or by *traspasos* (buyouts) that go unrecorded. The third reason is to inform both the TDHCA and the Legislature about how these informal processes and responses are changing, and how sensitive policy making can help to mitigate poverty and hardship, and be more supportive of low-income households’ aspirations to share in the American Dream of home ownership and asset creation. The key word here is **sensitive**, namely to create policies and laws that will support these legitimate aspirations and try to ensure that the social capital, sweat equity and bootstrap efforts of the people themselves will generate modest wealth and assets and that these efforts are not undermined by poor market performance, or by a lack of access to resources and opportunities that are necessary in order to advance people’s self-help housing efforts.

This chapter has laid out the broad findings of the extensive survey that we conducted in order to gather baseline data on titles and the prevalence of unrecorded contracts for deeds. While we are able to generalize our findings in six of the eight counties in which most colonias were selected randomly, this was not the primary aim of our Phase Three analysis. Rather, our aim

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<sup>29</sup> We are still waiting on additional information from Maverick County, and need to do further checks on tax data for Hays and Guadalupe.

was always to offer a better understanding of these contemporary processes, and in particular to broaden the scope of that understanding to include informal subdivisions in Central Texas, as well as the new subdivisions and the poor housing that often accompanies them in the border. By social science standards this can be considered an extensive one-off survey that provides many new insights that legislators and policy makers probably have not yet seen but which are likely to constitute “hot button” issues in the next two legislative cycles. Specifically, we observe a sizable minority of renters and other non-owners who live in colonias and subdivisions; a modest but worrying level of abandonment of homes and lots; the rise in the costs of land acquisition in real (\$2,012) terms, and the quite high down payments that are necessary whether to purchase under a formal a Deed or more informal use of CFD; the fact that CFDs and UCFDs have been important not just in the past, but remain commonplace today in more recent property transfers; the emergence of new colonia-type housing under model subdivision rules; seemingly aggressive practices of “flipping” lots, at least by some developers in some of these new subdivisions; indeed, new forms of poverty and housing conditions that suggest little scope for medium or longer term housing consolidation, and may come to resemble de facto renting as people buy for a year or two and then have their properties repossessed. We also observe important differences in developer versus consumer to consumer sales, and how the latter are particularly likely to be challenged when it comes to selling their properties under seller financing, at a fair price, in a timely manner, and with full formal titles such as Warranty Deeds.

We always understood that few people would have wills; what was unanticipated was the extent of a myriad of informal arrangements that many people have regarding the transfer of their properties post mortem, and the poor levels of understanding about what happens to one’s property under dying intestate, and the various ways in which legitimate claims from siblings, and from children from previous marriages and relationships, are all likely to confound “clean” title. Our research also suggests that even with a successful policy of promoting wills as the instrument for assigning one’s property, the relatively high costs of probate and the inability to liquidate the property through sale, will lead people back into informality as they attempt to avoid the unintended consequences of what, on the face of it, would seem to be common sense from a policy perspective. Indeed, many of the adjustments and reversions to informality that we have described in this chapter demonstrate that informality is alive and well, and actively evolves to reproduce, if not itself, new forms of informality. We will return to the policy implications of our research in the following chapter.

## Chapter 6. Conclusions and Policy Recommendations

### CONCLUSIONS

Our research uncovered three key big picture trends in relation to how property is being transferred in colonias and similar low-income subdivisions, what we have called Informal Homestead Subdivisions, or IFHSs, in this Report:

*Trend One: Developer-Financed Sales are Relying Largely on Deeds and Deeds of Trust but are Utilizing Other Problematic Practices that are Placing Homebuyers in Extremely Vulnerable Positions*

Our research confirmed that residents of colonias and IFHSs continue by and large to be shut out of the formal mortgage market and to thus rely on seller-financing and all of its pitfalls to purchase and sell their homes. Only 11.7% of the homeowners we surveyed who purchased their homes did so with bank or credit union financing.

In understanding the trends we uncovered related to seller-financing, it is important to recognize that there are primarily two types of sellers who are financing the sale of land in colonias and IFHSs: (1) developers (and other property investors); and (2) consumers—homeowners who for various different reasons have decided to sell their land to another current or new resident. Today, as discussed further in Chapter 5, developer property transactions are becoming less common in older colonias and are most common in newer subdivisions developed legally with infrastructure under the state's model subdivision rules. Of the homestead owners we surveyed who recently bought their homesteads (2008-2012), 83% of purchasers in pre-1989 developed subdivisions bought from another consumer, while 89% of purchasers in post-1996 developed subdivisions bought from a developer.

Developers selling land prior to 1995 in colonias relied largely on unrecorded contracts for deed as the primary means for financing land sales. Our research found that, since then, developers have turned to deeds and deeds of trust as the primary method of titling and financing land sales, although some still use contracts for deed, which are by and large recorded. Of developer sales occurring between 2003 and 2010 in colonias, between 73% and 83% utilized a deed and deed of trust financing mechanism. The legislative reforms of contract for deed in 1995 and 2001 have therefore been successful in steering most developers away from contracts for deed. For the small number of developers who still use contracts for deed, the legislative reforms have also been successful in ensuring that the contracts are recorded.

However, we found that residents obtaining developer-financing today still face a number of exploitative practices through their participation in a market that still lacks regulatory oversight and contains limited consumer protections. As discussed further in Chapter 5, since the implementation of the State's model subdivision regulations in the 1990s, some developers are promoting subdivisions with full services, but at greater cost and with aggressive practices that are facilitating rapid repossession and causing residents to feel vulnerable and inhibiting them from making investments and improvements to their homes. These practices cover a spectrum and include: (1) high interest rates (15-18% is typical, but we found rates as high as 20%); (2) negative amortization schedules created by high and aggressive late fees rolled over into the

principal and other practices; (3) reluctance of developers to accept balloon payments; (4) aggressively reclaiming lots for missed payments; and (5) exploitative legal documents, such as requiring buyers upfront at the purchase to sign over a deed in lieu of foreclosure to the developer. We also found some evidence of foot dragging by developers and special assessments to close out the contract and provide the final deed. As we outline below, the fact that developer practices morph over time, means that policies also need to adjust and anticipate such changes.

Paradoxically, therefore, even though the lots in these newer subdivisions come with water, septic sewage systems, electricity services, and paved streets, they contain some of the poorest housing conditions in the state: many comprise rudimentary shacks, campers, and old dilapidated trailers with little prospect of home improvement and development of sweat equity. Although they are not considered colonias (since they have infrastructure), many of the purchasers are confronted with the same dire housing conditions and high vulnerability to losing one's lot without compensation that we saw in the late 1980s when the Texas Legislature and policymakers first began regulating land transactions in colonias (Ward 1999). But unlike the purchasers of the 1980s, many of whom have since successfully obtained deeds to their homes, made improvements, and built substantial equity,<sup>1</sup> many of the purchasers in these new subdivisions have limited prospects for paying off their financing, investing in substantial home improvements, and building equity. These purchasers are becoming de facto renters, trapped in some of the most substandard housing conditions that can be found in Texas.

As discussed in Chapter 5, one of these newer subdivisions with high rates of repossession is Pueblo de las Palmas in Hidalgo County. Even though the developer and related and unrelated land investors are selling the lots with deeds and deeds of trust, we observed very high levels of rapid foreclosure by the developer and investors. Out of 100 lots we reviewed in the CAD records via a random sample, at least 45%<sup>2</sup> of the lots have been foreclosed upon at least once by the seller, who was almost always the developer or a local land investor (93% of cases). Of the lots foreclosed, 44% were foreclosed within a year of the sale, and 62% were foreclosed less than two years after the sale. This is stark contrast to national figures on homeowners who obtained mortgages from lending institutions in the heart of the nation's foreclosure crisis: Of households who originated their mortgages between 2004 and 2008, 6.4% total and 11.9% of Latinos lost their homes by foreclosure.

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<sup>1</sup> Many studies have documented this process of home improvement. One recent study funded by the Ford Foundation at the LBJ School (Durst et al, 2012) examines housing consolidation and neighborhood improvements in 10 colonias of Starr County over a 10-year period 2001-11. In the study, ¾ of the 201 households surveyed had made significant improvements to their homes, averaging \$9500 over the period (mostly from informal savings and tax rebates). The average estimated property value had risen 38% during the same period to just under \$51,000.

<sup>2</sup> We suspect that the foreclosure rate is even higher, but in the CAD records we were only able to observe the most recent three land transactions for each lot, and transactions information for some of the lots was missing or was indecipherable to us as to what had transpired in relation to the lot.

*Trend Two: Consumer-Financed Sales are Growing More Predominant and Have Higher Levels of Informality*

As discussed above and in Chapter 5, consumer-financed property transactions (when a resident sells to another resident) are becoming more predominant in older informal subdivisions. As consumers obtain title to their properties and resell them to future buyers, developers are becoming less dominant actors in these areas. Of the homestead owners we surveyed who recently purchased their homesteads (2008-2012), 53% purchased from another consumer rather than from a developer. The rates of consumer-to-consumer sales are highest in older subdivisions: 83% of purchasers we surveyed in pre-1989 developed subdivisions bought from another consumer. While upfront all-cash sales play a larger role in consumer-to-consumer sales (21%) compared to developer sales (8%), seller financing is still the norm in these transactions, at 63% of consumer-to-consumer sales.

Consumers attempting to buy or sell property lack access to information about the process, how to comply with the law, and how to protect their interests. For example, just under half of resident owners we surveyed who had sold land before did not obtain assistance from an attorney or real estate agent. As a result, our research found that consumer-financed transactions, in contrast to developer-financed transactions, have much higher levels of informality and an array of related issues, with pervasive levels of unrecorded contracts for deed. Of our surveyed homeowners, between 29% and 38% who purchased from another consumer from 2008 to 2010 purchased with an unrecorded CFD, in contrast to 9% to 12% who purchased in this time period from a developer. When we asked residents who had sold land before what type of transaction they used, we found similar results: 25% utilized a contract for deed or utilized an oral agreement.

These transactions can be quite improvised and informal, ranging from handwritten scraps of paper to typed documents that are cobbled together and even oral agreements. The documents used in the transactions often lack basic information about the transaction terms, along with the statutory-mandated consumer disclosures, notices, and other provisions required by the Texas Property Code. Consumers also lack information on the importance of recording their documents in the county clerk records or do not understand the process for recording their documents. In contrast, consumers purchasing with mortgage financing have the benefit of many other parties scrutinizing the transaction, including the title records and legal documents, and ensuring that the titling documents will be recorded.

As long as they lack access to affordable mortgage financing, low-income residents buying property in informal subdivisions are in a difficult bind. If they are purchasing their property under a contract for deed, they are trapped until they can complete payments and obtain a deed. As a result, unlike homeowners in the formal mortgage market, these informal buyers are unable to sell their home in the event they need to move (for example, to relocate to a new job in another state or to be closer to an ailing family member). Even if the resident has bought under a deed or has the knowledge and access to an attorney to convert his contract for deed into a deed, the resident faces the challenge of selling the property: of understanding how to handle the legal transaction, and the near impossible prospect of finding a buyer who is able to obtain mortgage financing. Most likely, the resident will be confronted with serving as the financier for the

property—thereby foregoing the ability to receive cash up front for his equity in the property, making it more difficult to move.

Purchases via a CFD also place residents in vulnerable positions in that these transactions typically do not involve title insurance. As a result, title searches are rarely conducted, and thus the buyer is never aware of any clouded title issues for the property. These purchases are also rarely made with homeowners insurance, likewise placing the buyer in a high risk position.

The issues that arise from the large-scale reliance on seller-financing are not unique to border colonias, but extend to other subdivisions in unincorporated areas throughout Texas wherever there is poverty, limited infrastructure, and shoddy housing conditions. These informal homestead subdivisions can be found in high concentrations in many interior Texas counties, including the hinterland of cities such as Austin, Dallas/Fort Worth, Lubbock, Houston, and San Antonio. (Ward and Peters 2007).

#### *Trend Three: No Wills Leading to Future Increases in Clouded Title*

A final key trend that our research uncovered is that many more property transfers will be occurring via intestacy law in the coming two decades, most likely leading to a dramatic increase in clouded property titles, with multiple owners and legal ownership that does not match the residents' understanding of ownership or the deed records. Our research in the surveyed colonias and IFHSs confirmed other's findings (LBJ 2010; Durst et al 2011) that only 10% of these owners have a will. Some families are taking matters into their hands by making formal arrangements to handle the transfer of title before the owner dies (e.g., deeding over the property to the youngest child), but this is the exception rather than standard practice. Informal agreements or "understandings" are more common (of households we interviewed in which neither spouse had a will, slightly less than half—46%— have informal agreements), but many of these will be trumped by intestacy laws. This is the same trend that has been seen in older African-American communities in the state and country where property titles have passed across multiple generations via intestacy, leading to serious problems with delivery of disaster recovery and other government rebuilding assistance, barring families' ability to ever resell their property, and presenting a host of other issues.

#### *Additional Findings*

Some of our additional key findings from the Report are as follows:

- ❖ Even with a sharp decline in the transaction usage rates of recorded contracts for deed in colonias and similar informal subdivisions since 2000, recorded CFDs remain an important feature of the property sales environment in border and interior counties. As discussed in Chapter 3, the 2010 rate of CFD recordings across all 10 counties we studied was approximately 450 with no signs of going away. An estimated 6,597 recorded CFDs are still active in the 10 counties we studied, highlighting the need for an expanded contract for deed conversion program (see policy recommendations below).
- ❖ Many of households purchasing under CFD never obtain a deed. As discussed in Chapter 3, in Maverick County, where we were able to obtain detailed title histories, only 18% of the homestead purchasers with recorded CFDs made the

- transition to a deed. Forty-five percent of the purchasers had their CFDs cancelled, and 37% of the CFDs are still outstanding.
- ❖ Despite state law requiring that CFDs be recorded, unrecorded CFDs are still commonplace (an estimated 13.8% of homeowners in colonias in the six border counties where we gathered data). As discussed in Chapter 4, an estimated 6,597 homestead owners in the colonias of six Texas counties (Hidalgo, Webb, Starr, Maverick, El Paso, and Cameron) currently have an unrecorded CFD. These unrecorded contracts cover a spectrum from more formal documents to handwritten letters, receipts, and oral agreements. See Appendix E for examples. Because we predict that consumer-financed transactions, which rely heavily on unrecorded CFDs, will continue to be a predominant form of land sales in older colonias, we predict that unrecorded CFDs will continue to remain in active use.
  - ❖ Renting is on the rise in colonias. One-fifth of lots we surveyed in all 8 counties are being rented or loaned to kin or friends, invariably on an informal basis—70% of renters we surveyed do not have a rental contract. We suspect that the higher levels of renting we observed in our survey are related to the challenges residents face in selling their property. The renters overall are younger than their owner counterparts, although 8% of the renters we surveyed were older than 61.
  - ❖ Owners who rent do so in part because they find that they cannot sell at what they consider a fair price, and because they fear vandalism and damage if the house remains unoccupied. An alternative to renting is to let relatives use the lots rent free.
  - ❖ Vacant lots remain commonplace (up to 21%) in many colonias and subdivisions, many of which are now locked out of the market by virtue of the owners being untraceable or other clouds on the title. During the survey, we also a significant minority of abandoned lots (4% of all lots visited during the survey in Maverick, Hays and Guadalupe counties were lots that showed signs of previous occupation or abandonment). We suspect that title impediments and the lack of formal financing are a major contributor to these high levels of lot abandonment and vacancies in colonias, but deeper analysis is needed, which we recommend below in “Priorities for Further Research.”
  - ❖ Interior counties have many of the same problems with seller-financed land transactions that border counties do, calling out the need for public policy responses to these problems to be state-wide in focus. In Hays County, for example, 11% of the owners we surveyed held a current unrecorded CFD. More detailed information on the interior counties we studied is in Chapter 3 and 4.
  - ❖ Government record-keeping systems for land transaction records in Texas are by and large archaic and inaccessible, leading to huge inefficiencies. The systems make it very time-consuming and otherwise difficult to research land transaction practices and to develop title histories on individual lots.
  - ❖ Homebuyers in colonias and IFHSs are confronted with a number of different clouded title issues, including insufficient legal descriptions, conflicting names in titling documents, and failure to obtain formal divorce decrees reallocating title to

the property. In some cases, most notably those in Starr County, we could not even find legal descriptions for the lots.

- ❖ As discussed in Chapter 3, of the homestead owners we surveyed who purchased under a recorded CFD, it took the owners an average of 8.4 years to obtain a deed (with median value of 8 years) from the date the CFD was recorded. Nearly 1/3 of respondents converted to a deed within 4 years, and 22% took 12 or more years.
- ❖ Homeowners in colonias and IFHSs are not accessing the numerous benefits they are entitled to under the Texas homestead tax exemption. Of the homeowners we surveyed, 47% have not obtained a homestead tax exemption from the county appraisal district. The homestead tax exemption provides especially key benefits for the seniors 65 and over, including significant tax breaks, a permanent freeze on school district taxes and the ability to defer payment of taxes until after death. New legislation passed in 2011 made it easier for homeowners with mobile homes to apply for a homestead exemption, but homeowners in colonias in IFHSs are still not taking advantage of the legislation. Based on prior work we have conducted,<sup>3</sup> we believe that homeowners lack awareness of the new legislation and, for those who have purchased used manufactured homes, lack assistance they need to obtain the title records from the seller or other alternative verification that the law requires for the exemption.
- ❖ The price of land in land-only transactions has risen over time in colonia and IFHS lots in our survey sample when adjusted to 2012 equivalent dollars. Sixty-six percent of land-only purchases made prior to 1989 were \$15,000 or less, and only 8% were \$25,000 or more. In contrast, for purchases after 1996, 75% were for more than \$15,000, and 30% were over \$25,000
- ❖ No statistically significant difference exists in the household income, nor in the number of workers per household for those who purchased with deed and recorded CFD or a UCFD.
- ❖ Buyers in the lowest-income brackets who recently bought a homestead (2008-2012), were more likely to buy from a developer versus another consumer. In particular, of the total developer sales in our survey, 61% had a household income of \$1,600 or less, while only 47% of consumer sales had household incomes of \$1,600 or less.

## **Understanding Informal Pathways to Homeownership**

Before highlighting specific policy recommendations, we wanted to first offer some additional information on why low-income families choose informal pathways to homeownership despite the pitfalls and challenges. These reasons should help inform

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<sup>3</sup> The UT Community Development Clinic has been involved extensively in assisting homeowners in Rancho Vista and Redwood—two informal homestead subdivisions in Guadalupe County—obtain homestead exemptions for their lots and manufactured homes. The application process can be quite daunting, even for law students, given the complexities involved with obtaining an exemption when there is a manufactured home on the lot that has not been titled in the owner's name, which unfortunately is a common issue.

any policies made to improve homeownership. In light of the challenges that many homebuyers in these communities face, a question that comes up is whether it makes sense for government policies to focus on homeownership in colonias or to instead shift towards expanding access to affordable and decent rental housing. The answer is that both approaches are needed. There is certainly a huge need for policies to support the development of more decent, affordable, and secure rental housing options in colonias. These options are currently extremely limited. However, we also believe it is just as critical that policy solutions recognize the importance of homeownership for residents in colonias and informal homestead subdivisions (IFHSs) and continue to find ways to provide for secure access to decent and secure homeownership options.

Even with all the perils and pitfalls that homeownership presents to certain residents, homeownership will remain an aspiration of most families. In contrast to the statewide homeownership rates of 64.8% in Texas, the rates were 77% for the residents we surveyed in colonias and IFHSs (with 56% of owner-occupied households earning less than \$1600 per month)<sup>4</sup> And, because these families are likely to continue to be locked out of the formal mortgage market, these families will continue to be placed in a vulnerable position as they navigate the informal seller-financing market (Way 2010).

There are two overriding reasons that appear to underpin families' choices for undertaking the path to homeownership, even while living without adequate infrastructure and substandard housing conditions. (Ward 1999). The first and foremost reason is to have a secure and affordable place of one's own in which to live and raise a family. As a homeowner living in an IFHS in Guadalupe County has stated:

“As a child of migrant workers we traveled all around the country working, moving from state to state, not ever having a place to really call home. So as a child, my wish was always to have a place to call home, an address that would be permanent. The greatest benefit in owning my home is for my sons and me to have a stable and secure place.” (Way 2010)

Despite the pitfalls of informal pathways to ownership, this form of homeownership still provides a stable source of housing for many colonia and IFHSs residents. Our research found that 56% of the residents we surveyed had been homeowners on the same lot for at least 10 years, and 19.5% of residents had been homeowners on the same lot for at least 24 years, in contrast to renters, 73% of whom lived in their homes for four or less years. And the housing remains relatively affordable. Of the homeowners we surveyed who were still making housing payments, 81% had monthly payments of \$501 or less.<sup>5</sup> Those who rent tend to be younger and at early stages of the life course than owners. Rental housing, with its low tenure rates (74% of the renters we surveyed had rented their homesteads for 4 or less years; only 8.1% had rented their homestead for 10 or more years) and dependency on the whims of a landlord, does not offer these families nearly the same sense of security and permanency that homeownership does, as well as the amenity value of a large lot and ample yard space. And the rents are not

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<sup>4</sup> Nationwide, of households living below the poverty line (\$18,104 for a family of four), 35% are homeowners. (Ward, Informal Homestead Subdivisions and Self Help Care).

<sup>5</sup> These data refer to payments for the lot as well as the lot and the house. Due to the nature of the survey instrument, we were unable to separate the two estimates or control for square footage of dwellings where data referred to land and house.

necessarily more affordable than housing payments. Of the renters we surveyed, 81% were paying rents of \$500 or less, which was comparable to the monthly payments of those homeowners who were continuing to make purchase payments.

As another IFHS resident in Guadalupe County has stated:

“My husband and me believe that buying property, land, mobile home or house is much better than renting. We were struggling to pay rent anyway, so we figured if we struggle to pay for something that will be ours someday it [is] worth the hard work and struggle. We feel safe and our place at Rancho Vista is good for my grandchildren. They can play outside with no worries. We can have a garden, flowers, and trees on our land—and at an apartment we cannot have these things to make a home better. We also live close to my husband’s two brothers and their families.” (Way 2010: 135)

A second reason that many families give (almost in same breath) for purchasing a homestead is the wish to create an asset for their children that might, one day, give them a step up into homeownership of their own (Ward 2012). Homeowners in colonias, through their own sweat equity and increase in market values, are becoming owners of an important asset that has ongoing use value, as well as potential exchange value. A Starr County study found that the average value of properties is over \$50,000—not a huge amount, but an important asset nevertheless (Durst et al 2012).

As a related value, homeownership also offers the promise of not having a monthly housing payment once the financing is paid off, which is especially important for low-income seniors in retirement. Of the homebuyers we surveyed, 66% had paid off their financing and owned their lots free and clear. As another Guadalupe County resident entering retirement stated: “Now that the land and mobile home is paid for, we just have to pay the taxes. We work hard all these years to have this land and mobile home and even though the mobile home is not in good condition it is our home and we feel secure and safe.” (Way, 2010: 134-35).

As alluded to in the preceding quote, homeownership also provides residents in colonias and IFHSs with opportunities for their adult offspring and their families to live with them or in a separate unit on the lot, allowing multi-generations of families to assist with child care or aging family members. In some cases this is done with the implicit understanding by the children that the lot will, one day, become theirs. (Ward 2008). For example, an individual may choose to live with and care for her homebound grandparent as an alternative to nursing home care, with the understanding that they can stay in the home to raise their own children. Of the homeowners we surveyed, 25% had six or more people living on the same lot, and 20% had six or more living in the same household.

An additional benefit homeownership for colonias and IFHSs residents is the ability to enter the informal market with low entry costs and open access: Credit checks are typically not performed and closing costs are limited given the lack of involvement by banks and title companies. (Way, 2010). For most buyers, down payments are also lower than the formal market, at least for purchases involving the land only: 62% of those who purchased the land only made down payments of \$500 or less.

It is important that any policies developed to address the pitfalls of informal ownership also recognize these benefits.

## **PUBLIC POLICY RESPONSES TO INFORMALITY**

As previous research and findings of this Report have amply demonstrated, there continues to be widespread evidence of exploitative practices among developers in colonia land sales, past and present. We have also demonstrated in this Report that the informality of property sales, transfers, and titling is widespread in Texas colonias and informal subdivisions. While informal, these practices are oftentimes rational responses to structural conditions of poverty, lack of information, and an inability of the formal market to respond adequately. Such informal responses also morph over time, and are often innovative adaptations and “workarounds” to market dynamics and developer practices.

That said, we do not advocate a laissez-faire approach: public policy interventions are urgently required in order to: (1) minimize exposure to the risks and hazards that homebuyers confront in informal property transactions; (2) protect homebuyers from egregious and nefarious practices of some developers and from the excesses of predatory lending; (3) allow owners to take advantage of their sweat equity by building investment and improving their homes; (4) enhance access to clean titles and minimize “clouding” of title through improper property transactions and conflicts over inheritance; and (5) respond to the needs of aging populations that are increasingly associated with the classic colonias formed in the 1980s, as well as to new purchasers that are found in colonias and informal subdivisions—whether new or old.

Below we outline a number of arenas that merit serious attention from legislators and other policymakers and break out directly from the CFD study we performed for TDHCA. Some of our policy proposals are quite specific and can be implemented with immediate and positive effect. Elsewhere, we have offered broad brushstrokes of policies that merit further consideration and more detailed policy development by NGOs, state agencies, and interested private sector actors. Moreover, because several of the policy issues we have identified below arose as new insights we gained during the course of our research project, they would benefit from further research and discussion.

### *Land Information System Reform*

Texas needs to adopt an efficient, uniform, and modernized land information system that is easily accessible to the public in an online format. Local jurisdictions’ land records systems across Texas are archaic and costly, making it very difficult to access the status of someone’s title today. Many records are not even available online. The grantor-grantee system for indexing records is particularly crude and outdated.<sup>6</sup> The failure of local governments’ land records systems—in Texas and other states—to meet our modern-day needs is reflected in the decision of the mortgage industry and title industry to adopt private, parallel systems for tracking title-related records. Reforms to land records systems would save the government, businesses, and landowners time and

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<sup>6</sup> <http://www.columbialawreview.org/articles/foreclosures-and-the-failure-of-the-american-land-title-recording-system>.

money. For example, Dane County found that its land record reforms saved county landowners \$6 million annually.<sup>7</sup>

Reforms to land information systems should also have a goal of consolidating land records across different departments. For example, in conducting our research, we found that county appraisal districts and county clerk offices have separate systems for documenting and coding the thousands of recorded land transactions that come through their offices, resulting in staff performing duplicative functions. This duplication could be eliminated and taxpayer costs minimize if the appraisal districts and clerks offices utilized consolidated land information systems.

In light of the huge advances made in technology over the past twenty years, including GIS data and sophisticated database systems, the timing is ripe for Texas to reform its land information systems.<sup>8</sup> Other states have made significant advances in this area.<sup>9</sup>

### *Policies to Improve Clean Titles and Effective Title Recording*

As we have shown in this Report, seller financing remains essential in colonias and subdivisions, but this often exacerbates informality, such that many contracts for deed continue to be used (especially in consumer transactions) and many of these still go unrecorded. Widespread access to formal bank financing remains a distant prospect, and so, seller financing is likely to remain the order of the day in these communities. That being the case, policies should seek to ensure that buyers obtaining seller financing can access: the full protections of deeds and deeds of trust, affordable legal assistance to review purchase documents, and assistance in enforcing their legal rights when they have been violated.

Several quite specific policy proposals are offered in this regards:

- 1. Deed and Deed of Trust Template.** Promulgate a simple deed and deed of trust template for consumer-to-consumer transactions (in Spanish and English) that can substitute for the handwritten notes and other informal documents that we have described in this report.<sup>10</sup> These forms should carry clear instructions about notarization and filing requirements. To limit the length of the documents, the Texas Legislature could adopt a statute providing for certain rights and remedies that are automatically incorporated into the consumer deed and deed of trust

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<sup>7</sup> <http://www.ruralgis.org/publications/documents/ROD1.pdf>.

<sup>8</sup> For example, as one advocate for land record reform suggests, the conveyance records should be identified by a range of information and integrated with property tax records, subdivision plats, and other recorded documents via a dynamic map.  
<http://www.columbialawreview.org/articles/foreclosures-and-the-failure-of-the-american-land-title-recording-system>.

<sup>9</sup> Examples include Wisconsin (<http://www.doa.state.wi.us/docview.asp?docid=8611>), Nebraska ([http://www.nitc.ne.gov/gis-temp/docs/pdf/LRM\\_Strategic%20Plan%20Final.pdf](http://www.nitc.ne.gov/gis-temp/docs/pdf/LRM_Strategic%20Plan%20Final.pdf)), and Virginia ([http://www.cim.vipnet.org/LRMTF/docs/lrmtf\\_final\\_report.pdf](http://www.cim.vipnet.org/LRMTF/docs/lrmtf_final_report.pdf)).

<sup>10</sup> Texas statutes contain many examples of promulgated forms, such as the affidavit of heirship in Chapter 52A of the Texas Property Code.

template by reliance on the template. Additional consideration would need to be given to how to make consumers aware of these forms and how to access them. For example, information could be provided with the property tax bills on a recurring basis in targeted informal subdivisions where consumer-to-consumer transactions are common. Aggressive consumer education will be essential to the effectiveness of the templates.

2. **Enforcement of Contract for Deed Laws.** Provide for stronger oversight of state laws protecting consumers in land transactions, ensuring that consumers have somewhere to turn to when their rights under these laws are violated—whether this is through the Attorney General’s Office or by providing funding support to legal services providers.<sup>11</sup>
3. **Legal Assistance to Low-Income Homebuyers.** Create a program with the Texas Equal Access to Justice Foundation to provide legal assistance to low-income homebuyers in seller-financed transactions, to review the sales transaction documents, advise them about reviewing the title, and assist with the overall transaction, as well as enforcement of the buyer’s rights once the initial purchase documents are completed. The program could be funded in a variety of ways, such as through a small fee on all recorded documents.
4. **Automatic Conversion of CFDs.** Provide for formal automatic conversion of a CFD into a deed and deed of trust as a matter of law, that would automatically incorporate a set of rights and remedies codified in a statute. For example, if Joe Black sells Jane Smith a lot under a recorded contract for deed, the contract for deed would automatically be converted to a deed and deed of trust, and the terms of the agreement in terms of default, foreclosure remedies, etc., would instead be governed as a matter of law by state statute (see point 1 above). Although they are not visible and in the public record, unrecorded contracts for deed should also be covered by the statute, and the promotion of consumer education programs will do much to ensure more standardized contracts and recording.
5. **Reform the State’s Contract for Deed Conversion Program.** Reform the State of Texas’s contract for deed conversion program to allow it to reach more homestead owners with CFDs. The State’s current conversion program entails paying off developers for the remaining amounts owed under a contract for deed and converting the contract into a deed of trust and note that is held by the state. As result of its design, the State’s current program is very limited in the number of families it can assist annually. The State should pursue alternative ways to assist families with converting their contracts for deed. For example, part of the funds could be used to serve many more families by paying nonprofit legal services providers to convert the contracts for deed without buying out the developer, given that Texas law requires developers to convert a contract for deed if the consumer requests a conversion. In other words, with this new proposed conversion program, while the developer would continue to hold the

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<sup>11</sup> When we spoke to the Attorney General’s office about enforcement of contract for deed laws, they reported to us that do not dedicate resources to this issue. That being the case, the most suitable candidates for legal assistance and enforcement are likely nonprofit organizations with a mission of delivering legal services to the poor.

note, the consumer would have the protections that come with having a deed and deed of trust as well as the ability to sell the property if she needed to move for reasons such as work or to be near a family member—protections which consumers do not currently have with a contract for deed. However, we recognize that while having a deed is a distinct advantage, because of high interest rates and low repayment schedules many grantees under CFDs and UCFDs are already locked into negative amortization (i.e. they have not paid back any of the capital, indeed, the capital owed is greater than when they started). Reform of conversion programs are only likely to work, therefore, if they are linked to programs that will enable buyers to make inroads into their debt (lower interest payments, repayment plans with favorable terms, elimination of aggressive late fee practices, etc.). A conversion program focused just on title would also fail to address the substandard housing issues so many residents are facing.

### *Policies to Support Clean Title Associated with Property Inheritance and Succession*

Since 89% of colonias homeowners do not have wills, the state needs to anticipate the clouded title issues that will likely arise as a result of many property titles transferring via intestacy or through informal, unenforceable agreements. New procedures need to be set in place to ensure that title is passed down to future generations more formally with interests recorded in the deed records.

- 1. Promote a Sensitive Campaign for the Use of Wills.** Intestacy laws favor multiple beneficiaries (spouses even if separated and all children, including children from prior marriages). Unless the beneficiaries agree, these laws trump any informal arrangements that have been made, leading to conflicts between family members over ownership, and impeding the ability to sell the property or obtain government rebuilding assistance. A will is the optimum way to assign property interests after death and to avoid downstream conflicts and challenges from other beneficiaries that can undermine ownership and transfer of clean titles. In the past decade, Mexico and Mexico City in particular have had considerable success in promoting wills through low cost campaigns, as well as minimizing the costs associated with probate. (Ward et al 2011) (see point 2 below).
- 2. Improve and Reduce the Costs of Probate for Low-Income Home Owners.** For low-income residents in Texas, a major set-back of having a will is the cost associated with probating the will, which can range from \$1,500 on up, depending on the complexity of the probate process. Unlike middle- and upper-income beneficiaries who usually have the resources to cover these costs or can liquidate the inherited property to cover the costs, the children who inherit their parents' home in an informal subdivision are often poor themselves and living on the lot. Policy responses here might include: probate court fee waivers for estates below a certain value where the heirs are poor and state funding for affordable legal services assistance, which could be funded with a very small fee on probate court filings.

## *Policies to Improve Market Performance*

- 1. Interest Rate Cap.** Cap legal interest rates for home and lot purchases for residential use at the higher of 12% or 7% over the amount charged by the Federal Reserve.
- 2.** Now that the use of **deeds in lieu of foreclosure** have been made illegal, empower the appropriate agencies and NGOs such as legal aid organizations and the OAG's office with the necessary resources to ensure that these statutes are enforced and that purchasers are provided access to the foreclosure process.
- 3. Consumer Education.** Launch a major consumer education initiative to expand awareness of homebuyer rights and responsibilities, inheritance, and land purchase agreements. Aggressive consumer education should also be provided to homeowners in informal subdivisions about their eligibility for the homestead tax exemption given the high rates (47% of the homeowners we surveyed) by which the exemption is not utilized by these low-income homeowners. The exemption is an extremely important benefit for low-income homeowners, especially seniors, saving them hundreds of dollars in tax liability each year, which the homeowners can then use for food, health care, home repairs, and other critical needs.
- 4. Promote mediation services** to advise on many of the aforementioned issues and to assist in informal conflict resolution and mediation
- 5. Promote the Recovery of Vacant and Abandoned Lots and Their Reincorporation into the Market.** With the high volume of vacant and abandoned lots in informal subdivisions,<sup>12</sup> policies are needed to determine how to reincorporate these lots back into the market and productive use. The policy responses will depend on the reason for the vacancy and abandonment, which can include: the inability to sell the lot with cash up front through formal bank financing, tangled title as a result of intestacy property, the inability to locate the owners, and delinquent taxes and other liens. As discussed below under research recommendations, a first response should be further research on this issue to better identify the drivers of property vacancy and abandonment.
- 6. Promote the Creation of Community-Based Lending Institutions.** Support is needed to set up non-profit, community-based lending institutions to assist buyers with cleaning up their credit and with obtaining financing to purchase and improve their homes. Many successful models of these institutions exist across the United States and other countries.
- 7. Facilitate Rental Arrangements.** Although renting may not be conducive significant home improvements, renting is a common feature of colonias and informal subdivision land transactions and likely to increase in the future.

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<sup>12</sup> In one multi-colonia study, approximately 22% of lots were vacant, and, although the non-occupancy rate had dropped by around 8% during the decade of 2000-2010, it still remained high (Rojas et al, 2012).

Moreover, renting helps to keep lots in play within the market that otherwise could be abandoned (see point 5 above). To support low-income landlords and tenants in these transactions, we recommend that resources be provided to create landlord-tenant programs similar to the Austin Tenants Council, which provides advice and mediation services to landlords and tenants to help them understand their rights and responsibilities under Texas law. Legal resources are also needed to help tenants deal with especially exploitative or unreasonable landlords.

We also recommend that the Legislature create a program in partnership with nonprofit organizations that would support lot “pooling” and lot recovery to be used for the construction of decent affordable multi-family (6-8) rental units, similar to those that we have begun to observe springing up in a number of colonias (Durst 2012)—albeit, consideration needs to be given to the location of the lots and maximizing residents’ access to high opportunity areas and important community amenities. The program could build on existing nonprofit self-help programs that exist in several border counties, utilizing the construction skills of workers in the community.

### *Other Policies*

1. **Expand Access to the Texas Homestead Tax Exemption.** As discussed above, 45% of the homeowners we surveyed do not have the homestead tax exemption. Homeowners in colonias and IFHSs should be receiving the same benefits of the homestead tax exemption that other homeowners receive. Major policy intervention is needed to assist these lower-income homeowners in accessing the exemption. Given the 2011 changes in legislation to expand access, appraisal districts should send out notices in English and Spanish to all residents without the exemption to explain the new law. Policies should also be adopted to provide homeowners with any assistance they need to complete the application paperwork. As a related issue, TDHCA should be providing homeowners with used manufactured home expanded assistance to obtain title to their used homes (which is needed for the homestead exemption) and provide greater enforcement against used manufactured home sellers who are not providing the required titling paperwork.

## **PRIORITIES FOR FURTHER RESEARCH**

Several of these policy arenas would benefit from further research:

### *Link Between Intestacy and Clouded Titles*

As we report in Chapter 5, 90% of the homeowners we surveyed do not have a will. We estimate that across all 6 extrapolative counties, 45,828 (89%) households in colonias lack a will. We urge additional research to examine more fully what the barriers are that families face in utilizing wills and the probate process. What are residents’ attitudes, knowledge, and expectations regarding property inheritance? Why is there such a low use of wills and what are the barriers to making and probating a will? This research should also examine what the impacts are of this widespread reliance on intestacy laws to effectuate the transfer of title after a homeowners’ death. As part of this issue, we also urge research on international and national best practices that have emerged to

overcome these barriers and to facilitate the ability of low-income homeowners to pass title onto their heirs. For example, how can the probate process be reformed made to work to the advantage of both low-income beneficiaries and effecting maintenance and curing of titles? This policy issue became salient during the rebuilding efforts following Hurricane Katrina in Louisiana and Mississippi and Hurricane Rita in the Houston region and Southeast Texas, where federal and state interventions were impeded because of widespread clouded titles.<sup>13</sup> We anticipate that this problem will widen as current and future generations of colonia and other low-income homeowners across the state die intestate.

### *Property Abandonment and Vacancies*

Chapter 5 also discussed how we have seen a significant number of vacant and abandoned lots in colonias. This is also an issue in many distressed inner-city neighborhoods of Texas. More detailed research is required in order to: (1) assess the levels to which these lots are still actively owned or are effectively “dead”; (2) understand why people walk away and abandon their properties (such as to what extent is property inherited via intestacy across multiple generations a cause of property abandonment); and (3) understand what types of policy approaches might assist with addressing the causes of lot abandonment and vacancy. Moreover, we urge research on what happens to these properties over time and their impacts on government resources and neighborhood vitality.

### *New Developer Practices and Purchase Success Rates*

In colonias and informal subdivisions, developer practices appear to be changing both in the scale of some of the new subdivisions that they promote and in the titling mechanisms that they adopt to effectuate lot sales. We urge TDHCA and the Texas Legislature to examine more about how and why these practices have changed and the likely direction of these practices in the future. We are especially concerned with instances where we observed rapid lot flipping within new subdivisions (when a developer resells a lot multiple times in a short time period).

Also, more information is needed on what extent homebuyers who purchase with seller-financing in colonias and informal subdivisions are unsuccessful in their purchases, how this compares with buyers in the formal mortgage market, and what drives the failure rates for seller-financing. This project has revealed that many would-be homeowners in colonias and informal subdivisions utilizing financing from developers do not make it—whether through CFDs or through formal deeds. For example, as discussed above and in Chapter 3, in Maverick County, where we were able to obtain detailed title histories, we found that less than one-fifth of Maverick County buyers with recorded CFDs in the

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<sup>13</sup> Following Hurricanes Dolly and Rita, approximately one out of five low-income households in Texas applying for hurricane recovery assistance had at least one title issue impeding the family's ability to access assistance. (Way, 2010, p. 118). For families with clouded title issues, the lack of clear title means long delays in receiving assistance or, where the title issues cannot be resolved in accordance with the program requirements, the inability to receive rebuilding assistance. For state and local governments, the large number of entrenched title issues means program inefficiencies as resources that could go towards rebuilding homes and businesses are instead expended on trying to clear titles.

1989 to 2011 timeframe made the transition to a deed. However, we lack precise information on why homebuyers fail to complete their purchases (with some exceptions involving notorious illegal practices by developers) and how many fail because they were unable to complete the terms of their contracts.

#### *Information About Lot Acquisition Transactions*

A question that arose from TDHCA board members is the level of knowledge that low-income colonia and informal subdivision residents have when they enter into purchase agreements for a lot or lot and home. How aware are purchasers of the terms of their agreements; how aware are they of interest rates; and to what extent does their awareness relate to ethnicity, level of literacy, and language competency (as we suspect these latter two factors are highly related to their awareness). Reconstruction of past knowledge is almost impossible, especially for purchases happening farther back in time, but a study looking at very recent purchases would offer more surefooted insights about consumer practices and knowledge.

#### *Summary*

Most or all of these future research suggestions arise from our Report findings, and also figure in the policy recommendations outlined earlier. The fact that we call them out here for further research is not intended to put on hold any consideration or implementation of the policy proposals. Rather, our intention is to highlight those areas of inquiry that can help better inform these policy proposals. We also hope to call out areas where we believe research can help inform new additional policy approaches to improve the state's land titling practices and improve the ability of low-income households to obtain clear and secure title to their homes.

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