

# 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.





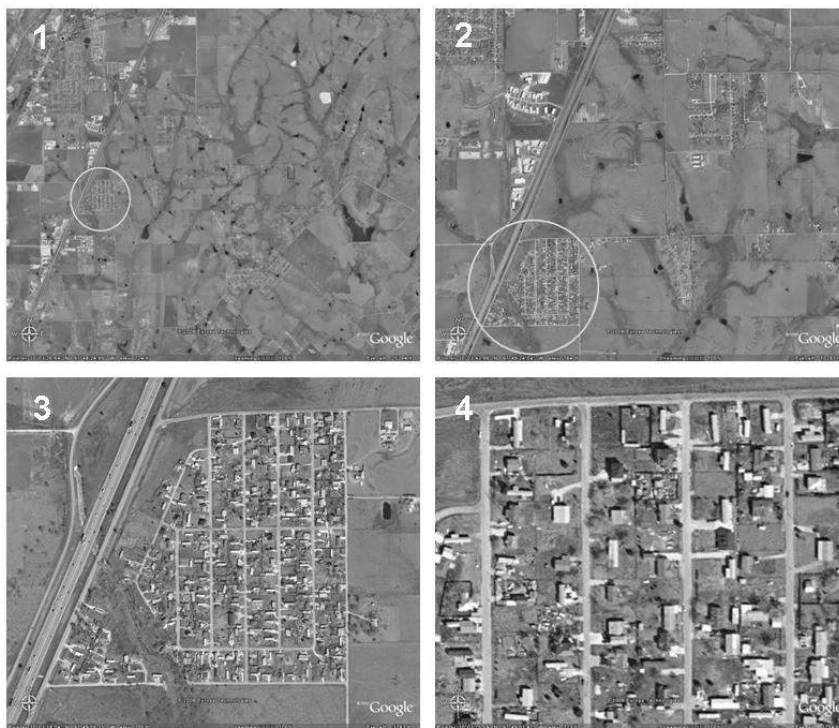
**Figure 1.4. Camper, plus trailer and carport,  
Mike's Colonia Starr County**



**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 Infomal 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.