

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.¹ 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.

¹ 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.²

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

² 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.³

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

³ 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,⁴ 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

⁴ 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.⁵ 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,⁶ 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.

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

⁶ 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,⁷ 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

⁷ 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 ⁸	Estimated Active Recorded CFD ⁹	Transaction Usage Rate per 1000 Transactions ¹⁰	Housing Unit Usage Rates Average ¹¹
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
TOTALS	16,261	1,765	5,451¹²		
*are estimates					

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

⁸ 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 Count is likely an undercount.

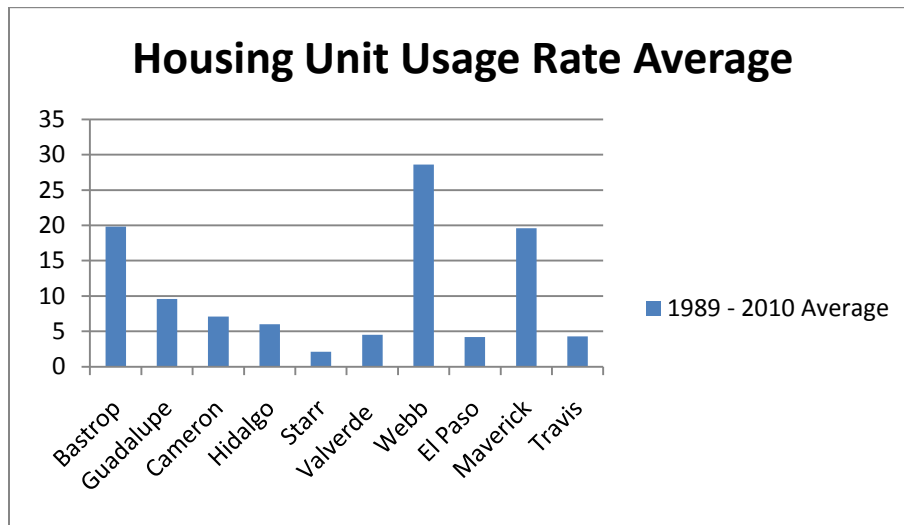
⁹ See the discussion in Appendix A.ii for how we arrived at these estimates of active recorded CFDs. As the appendix discusses, we believe this estimate for Webb County is likely an undercount.

¹⁰ 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.

¹¹ 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>.

¹² 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

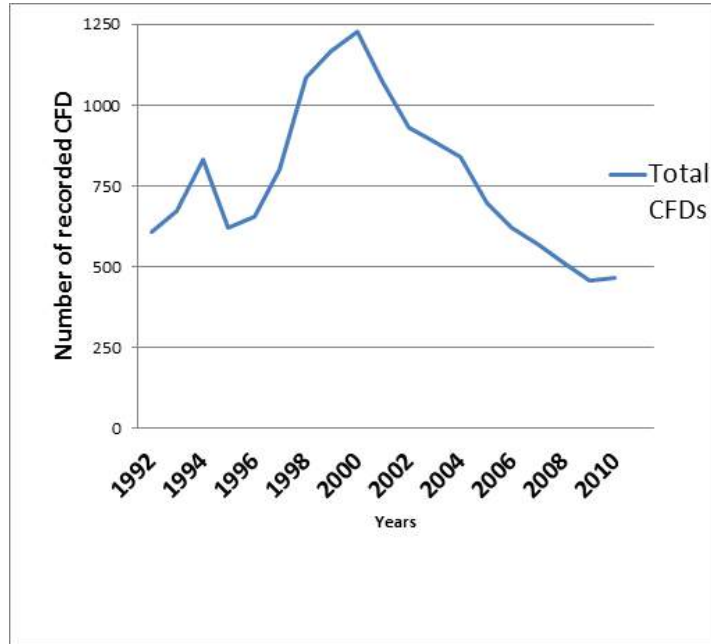
We were interested in assessing the impact of the state legislation enacted in 1995 (in border counties) and in 2001 (elsewhere) to regulate the use of Contract for Deed and provide consumers with a range of protections. It is important to note that the legislation did not prohibit the use of CFD as 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.¹³ 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.

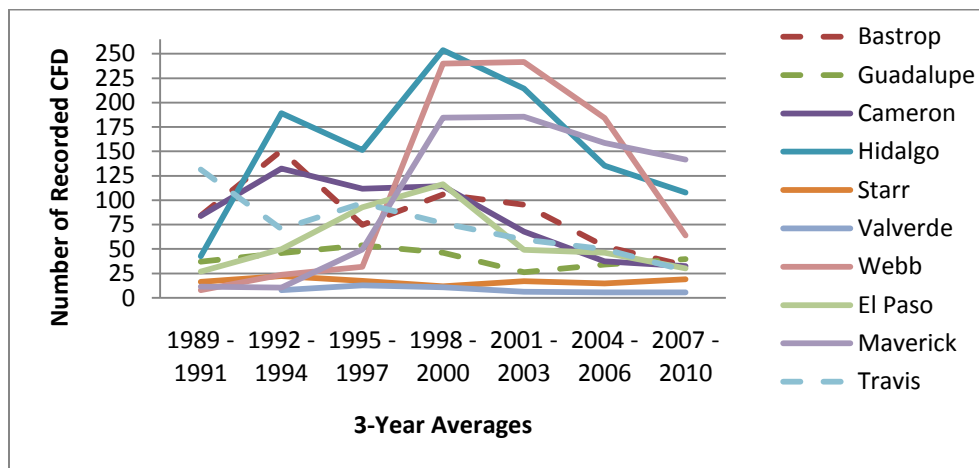
¹³ Texas Property Code, §5.076.

**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
1989-2010¹⁴**



¹⁴ 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**

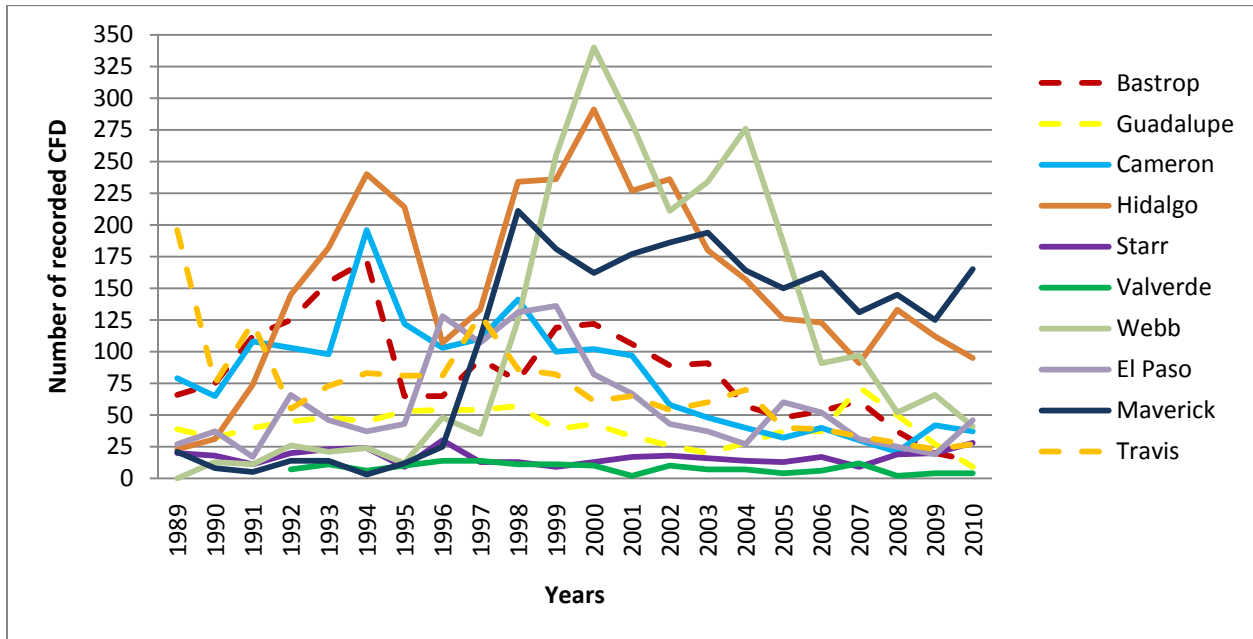


Figure 3.3 offers a three-year running average of recorded CFDs for each county from 1989-2010 and is displayed here to allow the reader to view the overall trends more easily than the year-on-year changes that appear in Figure 3.4. While the trends vary in each county, there is a general trend of an 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.¹⁵

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

Table 3.2. The Final Outcome of Recorded CFDs: The Case of Maverick County¹⁷

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,¹⁸ we

¹⁵ 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.

¹⁶ 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.

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

¹⁸ 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.¹⁹ 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.²⁰ 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.²¹ Taking the interviewee's declared year of purchase, the average

¹⁹ 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>.

²⁰ 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.

²¹ 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.²²
- ❖ 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.

²² 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.