

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 6,597¹ homestead owners—13.8% of homestead owners—in colonias² 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.³ 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.

¹ With a margin of error that varies for between ± 6.81 and ± 8.61 as described in Appendix A.i.

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

³ 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.

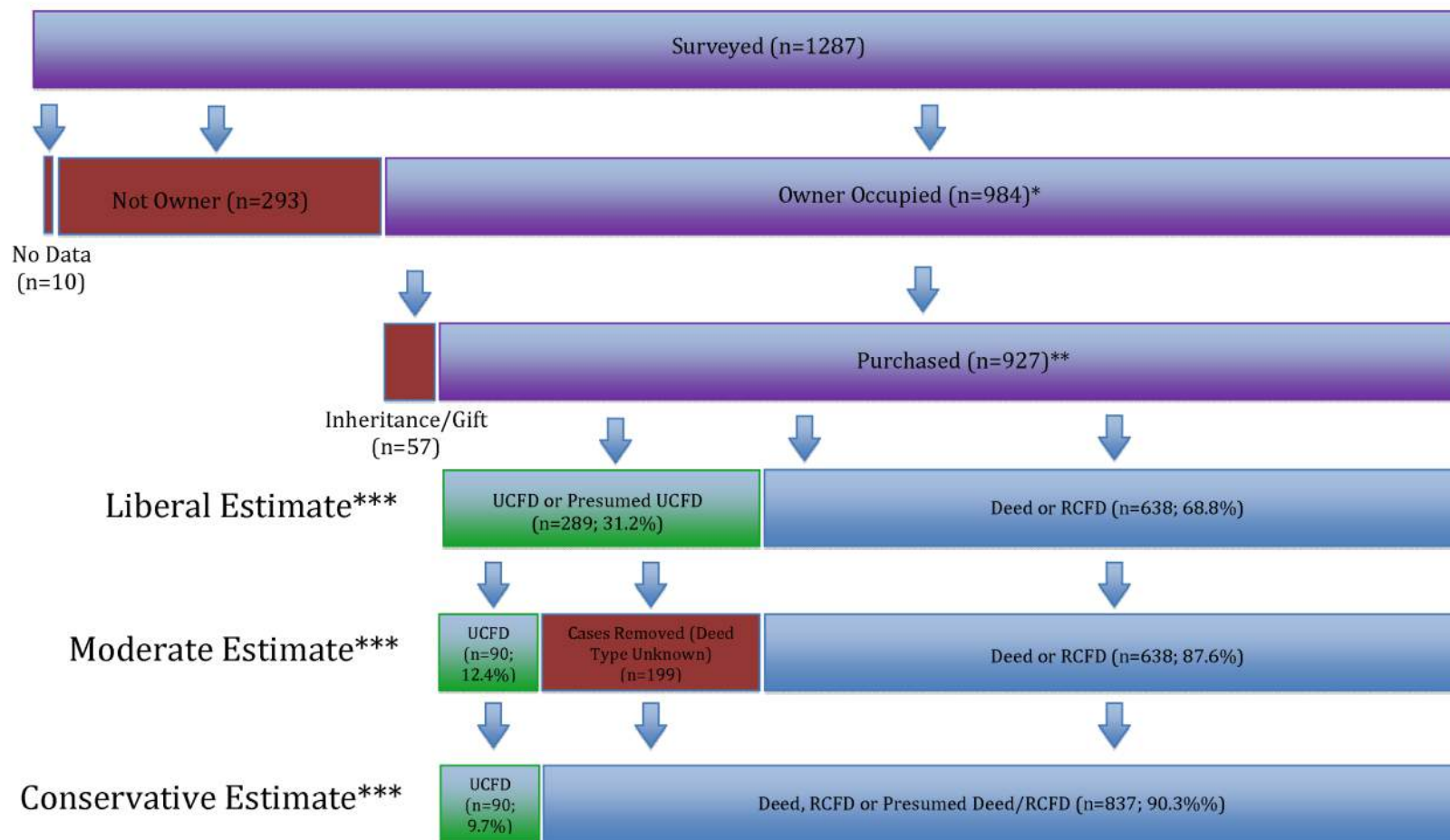
As our earlier discussion and database descriptions describe, in addition to the six border counties where colonias were selected randomly, we also included informal homestead subdivisions (IFHSs) in Central Texas counties, as well a number of newer colonias in border counties, all of which were purposively 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 subdivisions⁴ (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.

⁴ 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.⁵

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.⁶

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.

⁵ 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.

⁶ 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 companies⁷ 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.⁸ 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.⁹

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;

⁷ 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.

⁸ 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.

⁹ 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;¹⁰ (2) contracts for deed (CFDs);¹¹ (3) "ambiguous" document types, including those labeled as "other," "conversion," or "unknown";¹² and (4) "irrelevant" transactions that do not confer ownership or imply purchase.¹³ 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

¹⁰ 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.

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

¹² 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.

¹³ 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.¹⁴ Each of these assumptions increased the instances in which we labeled a lot as having an outstanding UCFD.

¹⁴ 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

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).**¹⁵

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.

¹⁵ 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.¹⁶ 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,¹⁷ we concluded that an

¹⁶ 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.

¹⁷ 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.¹⁸

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.¹⁹ 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.

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

¹⁸ 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.

¹⁹ 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.²⁰

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.²¹ 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

²⁰ See www.lahn.utexas.org, and click on “Texas Housing Studies” and “Rancho Vista and Redwood report.”

²¹ 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.²² 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,²³ 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

²² 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.

²³ 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 2010.²⁴ 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.²⁵

²⁴ 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.

²⁵ 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

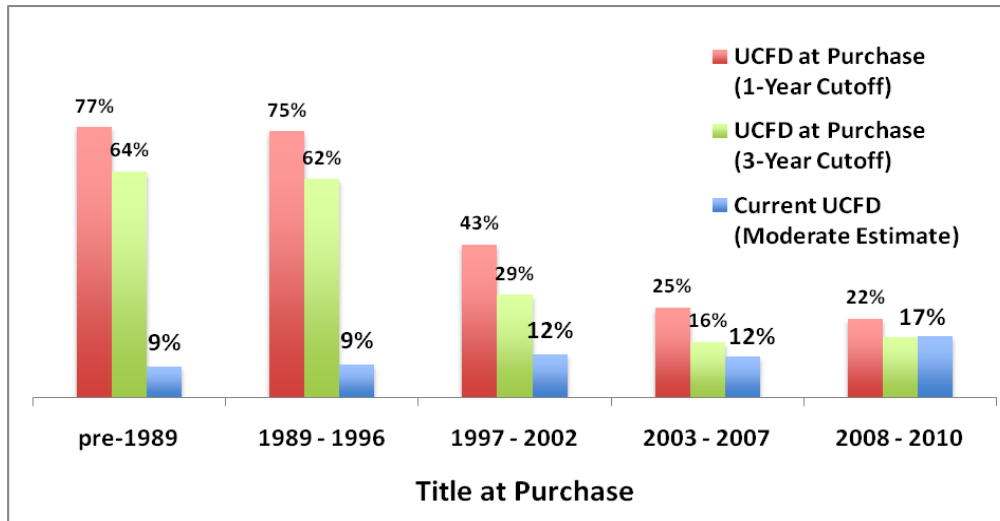


Figure 4.2. UCFDs at Time of Purchase vs. Current UCFDs

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).²⁶

Next, we compared the surveyed resident-owner’s purported year of purchase with the year that the interviewee’s name appeared in the title records²⁷ 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).²⁸

²⁶It 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.

²⁷ 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.

²⁸ 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
0 = same year	177 52.2%	7 25.9%	184 50.3%
1-2 years	81 23.9%	9 33.3%	90 24.6%
3 years	22 6.5%	0 0%	22 6.0%
4-9 years	37 10.9%	7 25.9%	44 12.0%
10-15 years	17 5.0%	3 11.1%	20 5.5%
16+ years	5 1.5%	1 3.7%	6 1.6%
Totals	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: “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.²⁹ 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.

* * *

²⁹ 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.