

## Chapter 6. Conclusions and Policy Recommendations

### CONCLUSIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Additional Findings*

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

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

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

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

## **Understanding Informal Pathways to Homeownership**

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

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

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

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

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

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

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

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

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

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

As another IFHS resident in Guadalupe County has stated:

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

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

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

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

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



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

## **PUBLIC POLICY RESPONSES TO INFORMALITY**

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

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

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

### *Land Information System Reform*

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

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

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

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

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

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

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

Several quite specific policy proposals are offered in this regards:

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

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

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

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

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

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

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

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

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

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

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

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

## *Policies to Improve Market Performance*

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

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

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

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

### *Other Policies*

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

## **PRIORITIES FOR FURTHER RESEARCH**

Several of these policy arenas would benefit from further research:

### *Link Between Intestacy and Clouded Titles*

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

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

### *Property Abandonment and Vacancies*

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

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

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

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

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

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

#### *Information About Lot Acquisition Transactions*

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

#### *Summary*

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

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