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

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

OVERVIEW OF CONTRACTS FOR DEED AND LAND TITLING IN TEXAS

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

Bank Financing: Deeds and Deeds of Trust

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

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

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

Seller Financing: Deeds and Deeds of Trust

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

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

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

Seller Financing: Contracts for Deed

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

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

[1] See Texas Property Code, § 5.079.

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

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

Said agreement is made between the said parties:

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

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

Dear Landowner,

This letter contains several valuable pieces of information for you.

1. STATEMENT OF ACCOUNT ACTIVITY FOR 2005

In the calendar year 2005 you paid $ 1121.29 in principal and $ 2081.60 in interest at 20.0% APR interest. Your present note balance is $ 64417.11.
As of this date, your next payment is due on May 28, 2006.
You have 228 payments remaining due before your contract is fully paid. This number may increase if you do not make all of the payments on time. There are no insurance coverages required or collected under the Contract.

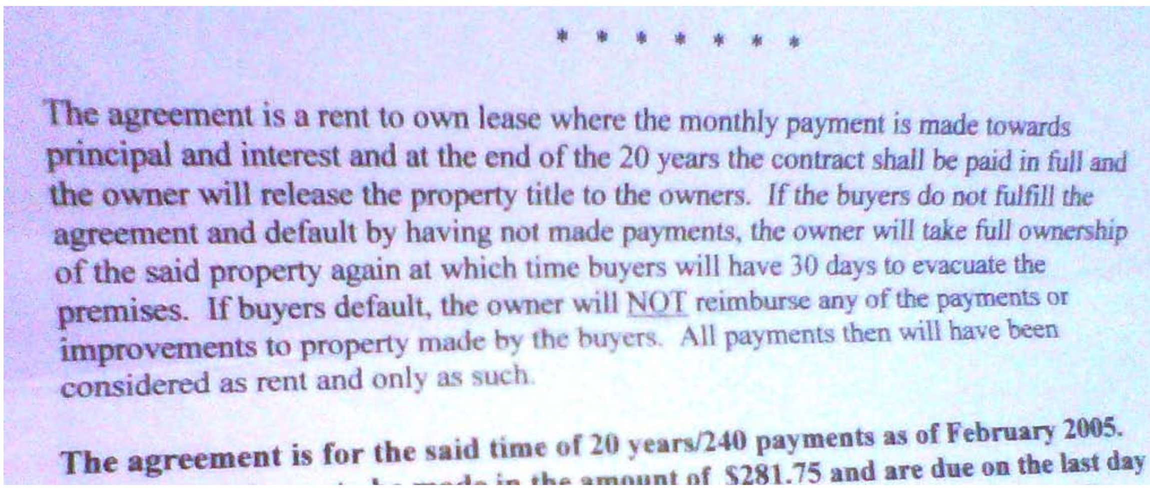
Figure 2.2. Excerpt from a Seller's Statement of Account Activity to a Buyer with a Contract for Deed in El Paso County.

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

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

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

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



* * * * * * *

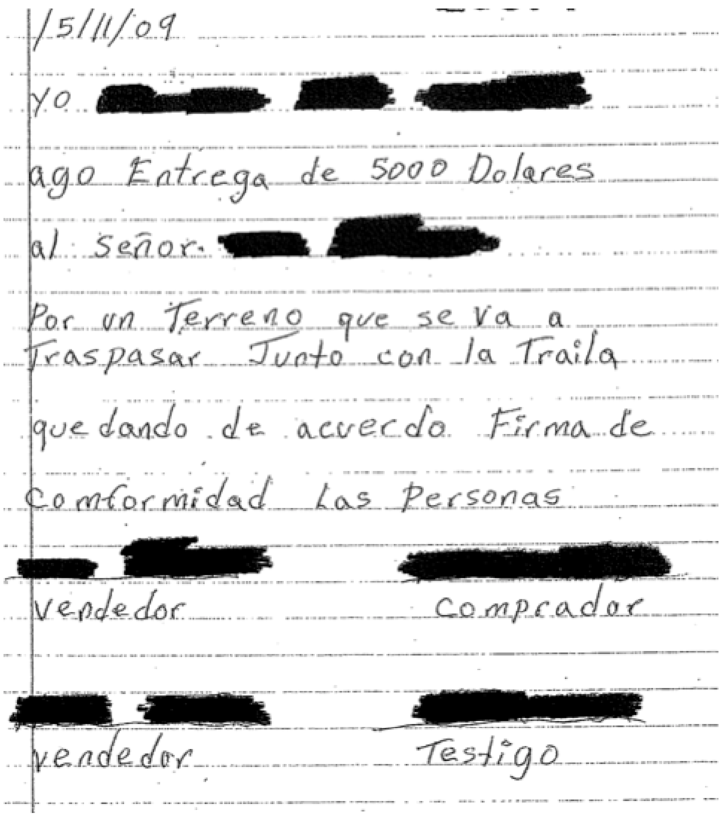
The agreement is a rent to own lease where the monthly payment is made towards principal and interest and at the end of the 20 years the contract shall be paid in full and the owner will release the property title to the owners. *If the buyers do not fulfill the agreement* and default by having not made payments, the owner will take full ownership of the said property again at which time buyers will have 30 days to evacuate the premises. If buyers default, the owner will <u>NOT</u> reimburse any of the payments or improvements to property made by the buyers. All payments then will have been considered as rent and only as such.

The agreement is for the said time of 20 years/240 payments as of February 2005.
... made in the amount of $281.75 and are due on the last day

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

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

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



/5/11/09

Yo [redacted]

ago Entrega de 5000 Dolares

al señor [redacted]

Por un Terreno que se va a
Traspasar Junto con la Traila

quedando de acuerdo Firma de

comformidad las Personas

[redacted]

vendedor comprador

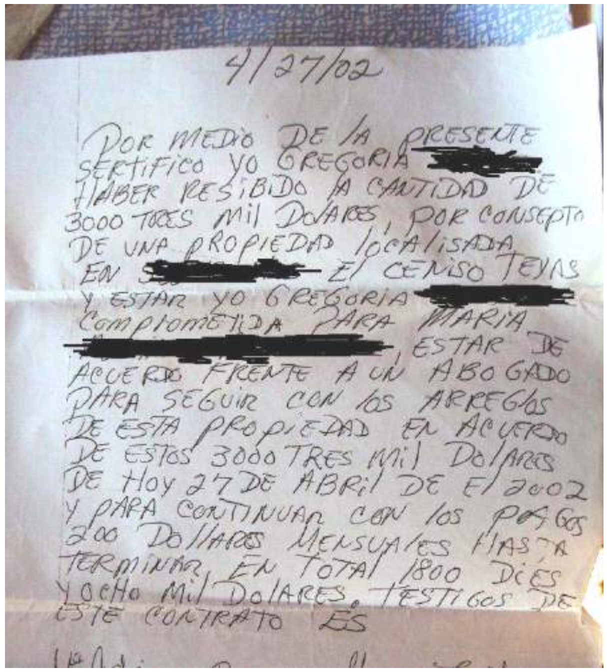
[redacted]

vendedor Testigo

Figure 2.5. Receipt for Oral Contract for Deed in Guadalupe County, 2009 (with confidential information redacted)[4]

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

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



4/27/02

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

Figure 2.6. Excerpt from a Handwritten Contract for Deed in Webb County, 2002 (confidential information redacted)[5]

Deeds in Lieu of Foreclosure

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

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

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

THE RESEARCH STRATEGY AND METHODOLOGY

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

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

Summary of the Research Strategy

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

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

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

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

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

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

Methodology for Estimating Unrecorded Contracts for Deed

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

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

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

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

Appendix A.i sets forth the details on our analysis, and includes: 1) how we went about identifying the colonias in each county and how we estimated the number of housing units in those colonias in order to create our sampling frame; (2) an explanation of how sample sizes were determined in each county and the criteria used in order to select the survey colonias; (3) a description of the types of survey materials gathered (face-to-face and mail-back surveys) and the relative rates of return and survey counts achieved; and (4) the statistical methods used to correct for possible sources of bias such as non-responses, unknown eligibility, and the effects of variances on key variables. The following are offered as a shorter overview, but we urge readers wishing to fully understand our analysis to refer to the more detailed Appendix A.i.

Population Estimates

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

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

The Selection of the Colonias to be Surveyed

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

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

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

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

With the exception of four colonias, our sampling frame ended up excluding colonias platted after 1995,[10] given the changes in the law that year requiring that new subdivisions on the border be developed with water and wastewater services (or bonded for these services) under the Model Subdivision Rules, thereby leaving these newer subdivisions off the government's list of what are formally classified as colonias. However, these post-1995 colonias, but for the inclusion of services, are similar enough in form and function to the pre-1995 colonias that we felt it was critical to include them in our survey, especially to allow us to track more recent developer practices. Located in unincorporated areas, these lots are being sold by developers to a low-income population who typically move substandard trailers or manufactured homes onto the lot or engage in a range of self-help construction. Extremely substandard housing conditions are quite common, especially in the larger newer subdivisions that we visited.

Figure 2.7. Merging of Three Small Colonias (Welch Tract, Cotter Tract and Amigo Park) into a Single Survey Sample Site. Hidalgo County.

As a result, after we selected our pre-1995 colonias, we incorporated newer developments that were, in almost all cases, adjacent to the randomly-selected colonias in El Paso, Hidalgo, and Cameron counties. These were identified on the basis of local informant knowledge, close examination of Google Earth™ images, and lot counts, and a quick review of online county appraisal district transactions to check the date of the development. It is important to emphasize that these newer colonias are not statistically representative of the new developments in their respective counties, but we felt their inclusion was critical for the reasons stated above. However, because these settlements are not statistically representative, we reiterate that the data gathered in these settlements do not form part of the extrapolation for the whole county.

[10] More precisely, although the list from which we selected our colonias included four communities platted after 2000, none of these had cartographical information that was accessible to us.

Figure 2.8 Seminole Valley I & II. Example of a New Subdivision Selected as a Non-Random Selection Survey Site.

Sample Size

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

Survey Creation

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

[11] See Appendix A.i, pp. 5-6, for the estimated sample sizes in each county.

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

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

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

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

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

Interview Preparation

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

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

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

Interviewer Training and Preparation

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

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

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

Lot Selection Logistics and Lot "Logs"

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

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[13] Appendix F provides a list of key informants and other staff and officials who were approached for information and feedback.

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

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

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

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

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

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

Mail-Back Surveys

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

In the event the total response to the mail-back survey was relatively poor: just2.5% of those that were delivered in the three large subdivisions where we did not sample but just distributed as many surveys as possible. A higher proportion of mail-back surveys were received (4%) from the sample-surveyed settlements (see Table 2.2 below).

Post-Survey

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

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

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

Table 2.2: Survey Returns by County

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

Once we had completed our surveys, it became apparent that we had obtained fewer completed questionnaires than needed to meet our original margins of error (Appendix A.i). However, one of the advantages of using a probabilistic sampling approach is that post-sample weights may be used to make adjustments for non-response rates, unknown eligibility, and the impact of variances (see Appendix A.iv for the amended weights). Nevertheless, the margin of error increased somewhat for our extrapolations to the county level from an originally anticipated ± 5 to between ± 6.82 (Webb) and ± 8.61 (Cameron).

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

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