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Self-help housing policies for second generation inheritance and succession of “The House that Mum & Dad Built”[☆]

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This paper explores how 30 years after their formation as squatter and irregular settlements self-built consolidated dwellings in Latin America are being passed from the original first generation low income home builders to their children and grandchildren. Today these original peripheral settlements are located in the intermediate ring of cities and these self-built homes have significant exchange values often in excess of \$30,000, but they also continue to have use value for second generation adult children, many of whom continue to live on the lots with their parents. Always in part conceived as an eventual “patrimony for the children”, these homes are now being inherited by the children and grandchildren as the original owner-parents die. Therefore national and local processes of inheritance and succession become central to the transfer of title and property across generations. However, few people have wills and most die intestate, creating new forms of irregularity and “clouded” land titles. Drawing primarily upon Mexican inheritance and succession law examples, this paper evaluates housing policies that will expedite inheritance and title transfers at low cost thereby providing title security to second and third generation households. This is essential for ongoing housing improvements and housing rehab in what have often evolved into high density and heavily deteriorated settlements.

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Self-help home ownership for first and second generation households in Latin American irregular settlements

Since the 1960s Latin America and other less developed regions of the world have experienced rapid urbanization often associated with the growth of low income irregular settlements, be they squatter invasions or illegally developed subdivisions (UN-Habitat 2003, 2006). As the phenomenon of informal settlement became widespread, often outpacing the rate of formal urbanization, so by the 1980s self-build settlements comprised between 10 and 60% of the built up area of many cities (Gilbert, 1996: p. 74).

In the early years of this irregular settlement expansion, government policy was largely to quietly ignore such settlements, but as research came on line about the self-built upgrading potential, and the social capital embedded in these communities became apparent,

so policy interventions sought to intervene to “regularize” and upgrade the physical status of these illegal settlements (Gilbert & Ward, 1985). This involved two principal arenas of intervention: first, to gradually provide essential infrastructure (water, electricity, drainage, street paving, schools, etc.) in an attempt to ensure that they were more fully integrated into the city as working-class neighborhoods. Second, although not in all cities, the illegal nature of land capture was addressed by transferring full title to residents who were, in effect, the *de facto* owners who had either squatted or had purchased un-serviced land at low cost.

These 1980s regularization policies became widely accepted and were actively promoted by multi-lateral agencies and by governments (Gilbert & Ward, 1985), usually at the national level. Moreover, the quickening of government decentralization in many countries of Latin America since the early 1990s (Campbell, 2003), together with efforts to improve administrative modernization and improved local governance has often brought low income communities into the formal planning and taxation structure of cities, as public officials seek to reduce housing and public utility subsidies to the poor, and create a more sustainable basis for city development (Ward, 2005).

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An important justification for title regularization programs has been that of incorporation into the formal market, increasing value of the housing stock and assets, and facilitating market performance by allowing for the free exchange in the market place, and using one's property as collateral for credit (de Soto, 2000). Thus argued, programs to provide clean title becomes a policy imperative, although there is a large literature that argues that these claims overreach the reality of ongoing informal market exchanges, little interest in leveraging credit, or of selling out period (Bromley, 2004; Gilbert, 2002; Varley, 2002; Ward, Guisti, & de Souza, 2004; Ward, Larson, de Souza & Giusti, 2011). Here is not the place to reopen that debate nor is that the intention: instead, we mention it to indicate that the idea of clean title remains an important element in contemporary policy that seeks to expedite property transfers, whether these occur through the market place or through inheritance and succession – the latter being the focus here.

Today these older regularized settlements often form part of the intermediate ring of Latin American metropolitan area development – what we are beginning to describe as the “innerburbs” (Encyclopedia 2011 – Ward) which are more or less equivalent to the “first suburbs” in the USA (Katz & Lang, 2005; Puentes & Warren, 2006).¹ Built progressively through self-help over time from the 1950s and 1960s onwards, these settlements today house large numbers – as many as 15–30% of the total city population – living as they often do in high density owner occupancy, and in rental accommodations and tenements. For those low income households, only by running the risks of illegal land acquisition and exposing themselves to the rigors of living in peripheral and un-serviced lots and building their own homes could they become home owners.

An additional rationalization was to have what they often call: *un patrimonio para los hijos* – a home for the kids to inherit in the future. Given that the original pioneer self-builders settled on their lots 30–50 years ago, many of these dwellings and lots are today being inherited by second and third generations, many of whom prefer to share with parents and siblings as an important (sometimes the only) route to become home owners where they can live and raise their own families (Ward, in press). For these later generations the *barrio* is their home, and unlike their parents many of whom were migrants, they are city born and there is little attraction in following their parents' example by moving to periphery as self-builders in newly formed and poorly serviced settlements. Instead, their housing aspirations and engagement in self-build is likely to involve reorganization and rehabilitation of the family home, itself often heavily deteriorated after many years of wear. Moreover, the dwelling unit and lot organization is rarely

adequate or appropriate for the emerging household structures and ownership aspirations for the house that dad built.

Thus, in many settlements that began informally, two sub-markets can be identified: those that are “consolidated” and those that are (usually) more peripheral, recently formed, and either “incipient” or “consolidating” (Ward, 1982; Abramo, 2003a, 2003b). Among the consolidated settlements there are also important differences between those that are less regular in layout, more centrally located, and often on very small lots e.g. the classic *favelas* in Brazil and the *vilas* in Argentina, compared with the much larger universe of irregular settlements – *loteamientos* and *loteos populares* – in those same cities, and which are larger neighborhoods, more regular in layout, and with considerably larger lots (see footnote #1). The physical and spatial characteristics of these subtypes are very different, and we argue that they should probably be analyzed as separate sub-markets. In this paper our focus is primarily upon the latter types of consolidated irregular settlements, which in many cases are no longer illegal, property titles having been formally transferred to the owner occupiers.

Fig. 1 shows how new rooms are constructed and extended on the lot over time through self-help. This case is the house of a seamstress in Guadalajara and we differentiate between public, semi-public and private spaces. The fifth stage of construction included a second floor, and there is also a space for her workshop/sewing room (AC on the diagram). Such incremental growth is typical in Latin America and provides myriad accommodation opportunities for other low income populations through renting or sharing. In some cities such as Bogotá petty land-lord tenant renting arrangements are quite common (Escallón Gartner, 2010; Gilbert, 1993; Ward, in press), while in Chile, many migrants and from the same town live *allegados* with earlier first generation arrivals (Gilbert, 1993). In Mexico sharing a lot or dwelling with renters is less common, and an owner is more likely to turn develop a second lot as a rental tenement letting out single rooms (Ward, 1998). Much more common is to sharing the lot or dwelling with close kin and there are a number of ways in which additional family members, parents and inlaws and children accommodated. They can set themselves apart in another section or half of the lot, or occupy a second or third storey; or live out of a single room that was originally their bedroom, now with a small stove in the corner, a TV, and a fridge, sharing the bathroom facilities with everyone else. Sometimes the division is clear-cut and may even be formalized – an upper floor with separate access, or onto a separate half of the lot (Fig. 2a and b) – but more usually it is an improvised and largely ad hoc arrangement in which families live out of a single room and share facilities. They have limited privacy, and rarely enjoy exclusive access to their own part of the dwelling. Two of the housing arrangements shown in the figures appear to be for non family members. Fig. 2a shows how a lot may be split in two, leading to homes that are very different in construction. Fig. 2c has stairs going to rooms for rent on the on the second floor while 2d has a spiral staircase (from the sidewalk, note) up to some re-furbished rooms on the second floor.

Despite the overcrowding and lack of privacy that one finds in these arrangements there are several real social capital and asset building advantages for adult children living in such shared arrangements with their parents and other kinsmen. They are able to mobilize the resources of poverty through reciprocal exchange relationships, household extension, shared living expenses and child minding with kin living on the same lot, and so on (González de la Rocha, 1994; Lomnitz, 1976; Moser, 2009). And although largely unexplored by researchers, our argument here is that an important incentive to remain living in the parental home (or close by), is to maintain a part share in future ownership of the property once their parents die. Whether those who have left the nest also expect to share equally as heirs is also unclear and is something

¹ Although arguably not an elegant term, it is the one that we are using to define the first ring of suburban developments in Latin American metropolitan areas most of which began a decade later than those described by Katz and his colleagues at the Brookings Institution – i.e. from the 1960s onwards. In our comparative city research in Latin America (www.lahn.utexas.org) we differentiate between the pre 1950s core or “Inner Urban Areas” (INURBAS); the INNERBURBS (1950/1960–1980); the contemporary suburbs (post 1980 contiguous development); and “exurbia” or the “peri-urban” areas beyond. Where appropriate (in Mexico for example) we sometimes differentiate between those innerburbs that developed in the 1960s and those of the 1970s. Of course, the innerburbs do not comprise exclusively early informal settlements, but also include middle income residential developments. Nor do all of our housing areas in the study cities conform to clear-cut first and second “ring” arrangements. Buenos Areas, for example, has a relatively small number of *vilas* (consolidated former shantytowns) estimated to comprise less than six% of the total city population and which are located in the inner city on the innermost edges of the and innerburbs, while most of the 1960s *loteos populares* are in located in either the second ring (*cordón*) or even in the contemporary periphery (third ring). These different arrangements relate to the nature and period of land development in each city. However, the working definition adopted here holds up reasonably well for most cities including those in the USA (Encyclopedia 2011).

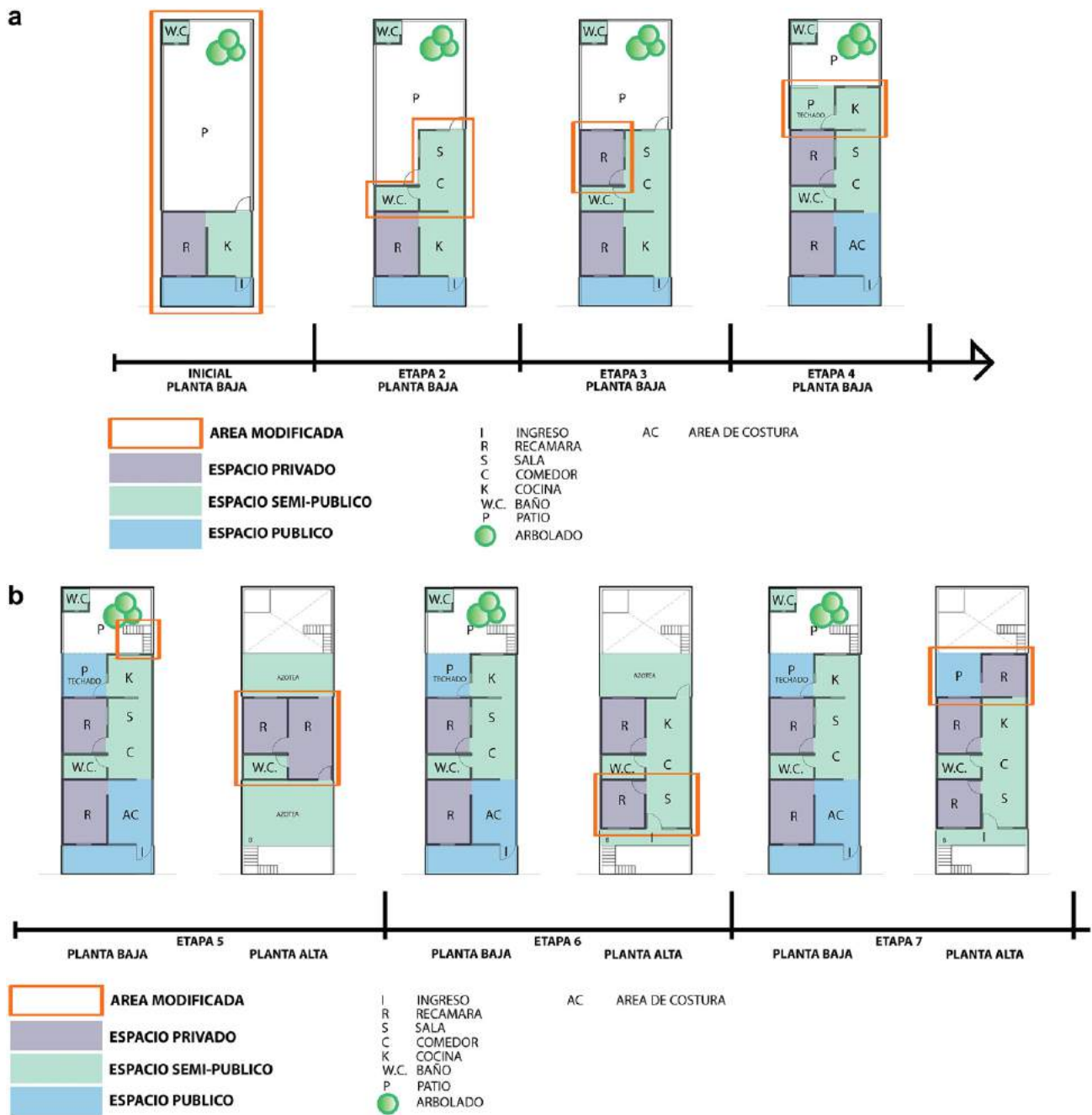


Fig. 1. Gradual expansion of self-built home over time, and development of second storey (planta alta) often accommodating adult children and grandchildren.

that we have only recently begun to analyze. As we describe below, under intestacy law they usually have an equal share to their parents' property, but little is known about whether, and how, that claim will be exercised and negotiated by non-resident siblings, especially if they have little proven need to live on the lot and lesser "moral" claim. Low income households rarely bequeath their properties to specific heir(s) through a will, and most die intestate. Nor do they assign the property title to another while they are still alive. Instead, most either do nothing, or they make informal arrangements and understandings about what they expect to happen when they die, but little is yet known about whether or not such arrangements are respected after death. What is clear, however, is that cities are experiencing a new wave of informality and property transfers which, if not fully understood,

and if left unfettered, is likely to create further obstacles to home improvements and market performance. It is also likely to herald a new round of title regularization as property is sub-divided and inherited by second and third generation family members (Ward, 2008; Varley & Blasco, 2000; Varley, 2010).

This paper has four main aims and sections. First, using original and recently collected multi-city research we document some of the trans-generational shared dwelling arrangements and household structures that exist on self-built (now) consolidated settlements in Latin America, and the monetary value that homes now enjoy as an asset. Second, we show that it is important to analyze national, state/provincial and local laws relating to property inheritance and succession in order to understand local housing market performance, and the effect that second and third generation multiple stakeholder



Fig. 2. a. This original single lot (10 × 20 m) has been formally sub-divided to form two separate homes (5m × 20). b. Original lot and dwelling that is now shared by three households – all members of the same original family. Each home is separately numbered, and a spiral staircase gives private access to the upstairs unit. c. Upstairs unit is for rent with stair access from the pavement. d. Spiral staircase from the pavement, to the newly constructed second floor.

interests may be expected to have on housing arrangements and market performance. Third, using qualitative methods and case studies, we analyze a range of scenarios of formal and informal methods of inheritance and succession practices employed by first and second generation low income households. We do this in order to identify some of the most common issues and tensions that arise among stakeholders. And fourth, we will explore some of the current policy initiatives in Mexico that have begun to address the issue of property transfer both before and after death, and we offer suggestions about how these policies can be adapted and improved in the future in order to respond more sensitively to shared family patrimony aspirations.

While this paper will focus upon evidence from a number of Latin American cities, and on Mexico in particular, it seems likely that many of the policy questions we raise will be found increasingly in consolidated irregular settlements worldwide. To anticipate our argument, wherever first and second generations continue to find *use value* by living together in shared lot arrangements; and wherever

the consolidated dwelling has a significant *exchange value*² (as an asset) for the poor, so we may expect that there will be an urgent need to develop a new generation of housing policies that will facilitate inheritance, titling, and housing rehabilitation in the many parts of our cities that formed through self-help some 30 or more years ago.

Asset building, property ownership, and sharing in the midst of poverty

The findings discussed here form part of a broader Latin American study to examine the housing structure and new policy applications for consolidated working-class (former) suburbs some

² See Burgess (1982) for a discussion of Use and Exchange values as the terms appear both in Marxist theory and in Latin American practice; also Ward et al. (2011) for discussion of use and fee simple rights in the *colonias* in USA.

twenty-five or more years since they were formed.³ Working to a common methodological framework, major surveys were conducted in 2009 in a number of consolidated settlements in several Latin American cities in order to gather data about housing conditions, household composition and arrangements, lot demographics, property titles, and mobility patterns. A second phase of analysis in some of these cities was to undertake a small number of “interesting” case studies drawn from the households that were originally surveyed. The idea here was to gain greater insights about physical dwelling and household expansion over time and across generations; to take measurements and construct detailed plans of home; reconstruct life histories and the family tree of the owner(s) and relate this to the entry and exit of household members; identify housing problems associated with deterioration and intensive use over so many years, and to better understand the priorities for home improvement, household reorganization, and the expectations of stakeholders about future inheritance. Any one of these criteria could be used as the primary reason for selection as an “interesting case”, but those we discuss in this paper relate specifically to inheritance and succession issues.⁴ Unlike the random household survey of owners which usually lasted 25–35 min, these intensive case studies involved a team of several persons working intensively with the family over a number of hours and often several visits, and were the basis for some of the specific family inheritance scenarios discussed later.

Is a home “Forever”? Trans-generational use values

In order to understand trans-generation inheritance processes we will first discuss some of the empirical data drawn from both the 2007 and 2009 surveys. The first dataset (2007) was a precursor to the full survey and comprised a resurvey of households and dwellings in which interviews had been conducted some 30 years earlier in Mexico City and Bogotá (Ward, *in press*). Only some of the 2007 data are germane to this analysis and are sufficiently comparable to be included in Tables 1 and 2, but it was in the process of undertaking this first round of research in 2007 that the trans-generation nature of sharing, and the stakeholder ownership expectations of adult children and grandchildren began to emerge and piqued our interest, eventually becoming an important element in the wider multi-city project.

One the first major findings from the 2007 survey confirms the notion that once a settlement is established and has undergone some consolidation there is an almost total lack of mobility among owners, and reinforcing Gilbert’s (1999) argument that for low income self-builder owners of the 1960s and 1970s “a home is forever”. A remarkably large proportion (over 80% in Bogotá and Mexico) of the original householders were found to be still living on their lots some thirty years later (Ward, *in press*), even where sometimes an original pioneer parent(s) had since died. In most cases at least one of the original spouses still lived on the lot. Very few lots had been turned over to non-residential uses (See Table 1: [1b]), although in Bogotá a small proportion were now exclusively rental (either rooming tenements or small apartments [Ward, *ibid*]).

Similarly, in the 2009 surveys owner households reported living on their lots for an average of over 25 years, and often considerably longer (see Table 1: [1d]), confirming low mobility among the original owners.⁵ This tells us that some 25–30 years later most of the first generation households were still occupying their lots and/or remained the title holders.⁶

A second feature relates to the evidence for second generation sharing of lots with parents. In most cities population densities have increased due to sons and daughters continuing to live close-up with their parents, albeit often in independent households on the same lot, with their own young children (the grandkids). The average number of families living on each lot in Mexico City and Bogotá was 2.4 and 2.11 respectively (Table 1: [1e]), with an average of 8.91 and 8.62 persons living on the lot in each city (Table 1: [1g]). This was almost double that of 30 years ago (when they were mostly young nuclear families). The densities were found to be especially high in Bogotá due in part to the smaller lot sizes and the need to build upwards to create additional living space. In Mexico City sub-division of the lot, as well as the construction of second and third stories were commonplace. Here no less than 40% of lots had 3 or more families living on the lot (Table 1 [1f]). Only a third of all lots recorded a single family residence (Mexico 35%, Bogotá 28%), and in both cities the original owners had a higher average number of families living in the lot than did the more recent arrivals. This confirms the greater likelihood for on-site splitting among the original families, although many of those who arrived subsequently have also been living in the settlement for many years.

The two cities differ somewhat in the nature of this on lot mixing: the scenario of close kin-related households being the norm in Mexico City, whereas in Bogotá it was associated with kin sharers as well as renter households (some 50% of lots contained both renters and kin sharers [Table 1: [1i]). Thus sharing with parents in the long term or on a permanent basis appears to be quite normal in both cities, mixed in with some income earning from renters in Bogotá (Gilbert, 2010; see also Varley, 1994). When we compare these data with several other cities in Mexico and Latin America it is immediately apparent that Mexico City and Bogotá have considerably higher densities and a much greater degree of lot sharing than do other cities in our

⁵ 2009 surveys across 15 settlements (almost 1200 cases) in Santiago Chile, Buenos Aires Argentina, Montevideo Uruguay, and Guadalajara and Monterrey in Mexico. While not part of this four-city database analyzed here, similar surveys were also conducted in Bogotá and in Guatemala City and both show an average of 37 years residence in the same dwelling respectively (www.lahn.utexas.org). These higher end averages were also common in Chile and in Mexico; whereas in Buenos Aires and Uruguay, where settlements are not quite so old, the average number of years is rather less.

⁶ It should be emphasized here that this does not mean that there is no outward mobility. Abramo (2003a, 2003b) in particular has argued that there is considerable inter and intra-settlement mobility in Brazilian consolidated *favelas* (but see also footnote #1 for definitions), but he does not disaggregate mobility for owners versus other household members. Moreover, we argue that once the market is established and property values rise, the lack of financial policy supports to assist sales, there is little effective demand for lots which further inhibits mobility (Ward, *in press*). However, Abramo is correct in asserting that there is a lot of “churn” and mobility of household members who exit and (sometimes) return to the family homeplace during the life course. Indeed our intensive case study methodology which sought to match housing construction to household arrangements showed high levels of circulation of family members, but the anchor point (the owner[s]) rarely moved. Moser’s 2009 panel study (1978–2005) in one barrio of Guayaquil shows that 50% of adult children were living on their parents lot in 2005, with a further 14% resident elsewhere in the same barrio, although here, too, it should be emphasized that the situation is not static, but that many children move out and later return. Renters, too, have always showed high levels of mobility and contribute to the observed population turnover (Gilbert, 1993).

³ This is a comparative study of a number of Latin American cities in Argentina, Brazil, Chile, Colombia, Dominican Republic, Guatemala, Mexico, Peru and Uruguay, and which explores the contemporary social and housing dynamics in the first generation of irregular settlements that, for the most part formed in the 1960s–early 1980s. Comprising different research groups and Principal Investigators (PIs), the study is being coordinated by the lead author at the University of Texas at Austin www.lahn.utexas.org. The datasets utilized in this paper will shortly be made publicly available at that website (currently they are under restricted access to project personnel).

⁴ See www.lahn.utexas.org for a full discussion of the methodology.

Table 1
Household structures, lot densities, housing characteristics and property values in consolidated self-help settlements, Mexico and Other Latin American Cities (2007 Survey and 2009 Survey data). (Shaded cells = Data from 2007 restudy).

Dimension of analysis	Mexico City 2007 study 5 colonias (N)	Bogotá 2007 study 3 barrios (N)	Guadalajara 2009 3 colonias (N)	Monterrey 2009 2 colonias (N)	Santiago 2008–2009 3 colonias (N)	Guatemala City 2009–2010 1 colonia (N)
1a. Original family still living on lot in 2007	(253)	(148)				
Confirmed – still the original family	81.8% (125)	80.6% (83)				
1b. Lot Land Use Change Since 1978						
No change – owner residential	89.4% (160)	76.5% (78)				
Residential but now rental residence	7.3% (13)	19.6% (20)				
1c. Age of owner						
Trimmed mean: age of owner			58.2 (232)	51.89 (124)	66.6 (132)	62.6 (36)
1.d Lot details:						
Size in sq. meters (trimmed mean)	ND	119m ² (45)	143.7m ² (211)	129.8m ² (105)	181.6m ² (125)	241.4m ²
Mode		140m ² (65)	120m ²	105m ²	162m ²	229.5m ²
Yrs living on the lot (trimmed mean)	35.2 (189)	36.1 (143)	25.2 (240)	29.8 (123)	39.5 (150)	40.3 (48)
Median yr of occupancy of lot	1972	1971(143)	1985	1977	1970	1965
1.e Households on lot						
Average # of households on lot in 1978	1.44 (145)	1.51 (142)				
Trimmed mean # of separate households in 2007 & in 2009	2.4 (134)	2.11 (92)	1.46 (242)	1.32 (126)	1.44 (154)	1.55 (52)
1.f # of Separate households on lot						
Single family	35% (47)	28% (26)	67.8%	73.8%	61.0%	67.9%
2 families	25% (33)	25% (35)	21.5%	20.6%	34.4%	22.6%
3 families	15% (20)	24% (22)	8.3%	5.6%	3.9%	5.7%
4 or more families	25% (34)	10% (9)	2.5%	0	0.6%	3.8%
1.g Densities on lot – persons						
T. mean # of people on each lot	8.91 (112)	8.62 (71)	5.56 (242)	4.81 (126)	4.85 (156)	6.1 (53)
Median # people per lot	7.5	8	5	5	5	5
T. mean # persons in home	3.56 (112)	4.12 (71)	4.7	3.92	3.88	4.37
1.h Average # of rooms and persons/bedroom						
Rooms in first house unit (mean)			4.98 (240)	4.77 (124)	6.12 (155)	5.41 (51)
Rooms in second house unit (mean)			3.2 (49)	3.0 (28)	3.25 (55)	3.0 (9)
Persons/bedroom first house			1.76 (242)	1.59 (123)	1.41 (57)	1.37
Persons/bedroom second house			2.37 (56)	2.51 (26)	2.03 (24)	1.9
1.i Household structure 2007						
Me and my spouse	4.0% (4)	4.5% (3)				
Me and my siblings (or inlaws)	15.2% (15)	12.1% (8)				
A mix of parents/inlaws and siblings (children of the parents)	60.6% (60)	22.7% (15)				
Parents and other kin	15.2% (15)	4.5% (3)				
A mixture with nephews or neices	0	3.0% (2)				
A mixture of parents/children & (unrelated) renters	3.0% (3)	27.2% (18)				
Mixture of kinsmen and renters	0	22.7% (15)				
Others (unclassified)	2.0% (2)	3.0% (2)				
1.j Household structure 2009						
Nuclear household			68.3% (166)	64% (80)	40.4% (23)	62% 36)
Extended			31.4% (76)	33% (41)	45.6% (26)	33% (19)
Singleton (non family)				2.4% (3)	14% (8)	5% (3)
1.k Property values	(2007)	(2007)				
T. mean self-assessed	\$101.8K (32)	\$26.6K (45)	\$47.1K (153)	\$22.46K (55)	\$27.14K (106)	\$37.4K (27)
Self-assessed (median)	\$90.91K (32)	\$29.37K (45)	\$37.74K(153)	\$22.6K (55)	\$26.9K (106)	\$32.8K (27)
T. mean tax assessed (average all settlements)	\$66.67K	\$20.73K (132)	\$39.86K (58)	\$16.75K (23)	\$12.76K (70)	\$5.84K (7)

Source: 2007 Data for Mexico City and Bogotá. Survey fieldwork (Ward, in press). 1978 data Gilbert and Ward, 1985. 2009 data for other cities is from the Latin American Housing Network study (www.lahn.utexas.org).

study. But even elsewhere sharing is an important feature proportion in 25–40% of the cases, with five or more people living on the lot (Table 1: [1f & 1g]). It looks as though competition for residential space in land markets in Mexico City and Bogotá is much more intense – a point also described by Gilbert and Ward (1985) in their study of those two cities. Recent (2009) fieldwork in Monterrey and Guadalajara confirm that while sharing a lot with adult children and grandchildren is common, the land and housing markets have offered greater more opportunity for adult children to move out of the parental home into other nearby self-help settlements either as renters or as self-builder owners in their own right. At the same time our detailed intensive cases studies which constructed life history changes tied to the development trajectory of the dwelling

revealed a lot of “churn” as family members exited and returned to the family home for reasons of work, marriage, divorce/separation, etc.⁷

The third principal finding relates to the issue of clean title and whether the person deemed to be the owner was also the named

⁷ Traditionally in Mexico after marriage the daughter-in-law lives with the son's parents, and this was a common pattern that we observed in the cases of lot sharing with children. However, also common was to find a daughter sharing with her parents, usually after she had been abandoned or abused by her husband/partner and had returned to live with her parents', often accompanied by her children. In these cases the daughter often ultimately became the primary care giver for her elderly parents. See also Varley (2010) for a discussion of patrivivolocality and the range of informal inheritance allocations that she found in Guadalajara.

Table 2

Change of title of home owners and inheritance plans, consolidated self-help settlements in Mexico and Other Latin American Countries (2007 Survey and 2009 Survey Data) (Shaded cells = 2007 restudy).

Dimension of analysis	Mexico City 2007 study 5 colonias (N)	Bogotá 2007 study 3 barrios (N)	Guadalajara 2009 3 colonias (N)	Monterrey 2009 2 colonias (N)	Santiago 2008–2009 3 colonias (N)	Guatemala City 2009–2010 1 colonia (N)
2a. Sought to change name on title?						
Title change	10.8% (12)	28% (21)				
No title change	83.8% (93)	70.3% (52)				
In process of changing the title	2.7% (3)	1.4% (1)				
Not know how to go about making make a change in the title	2.7% (3)	0				
Year of title regularization (median)			1989 (150)	1988 (42)	1979 (85)	NA
No change of title since regularization			95% (171)	89.5 (85)	71.5 (93)	NA
2.b Testamentary/succession						
% Owners with a Will			12.8% (31)	7% (9)	2.6% (4)	18% (9)
% Households “informal arrangement”			44% (84)	35% (35)	61.2% (30)	41% (41)
2.c Reasons why people don't make a Will?						
Don't know how			2% (4)	8.2% (7)	5.6% (2)	18.5% (5)
Cultural reasons			25.6% (51)	68.2% (58)	47.2% (17)	44.4% (12)
“Desidia”			36.25 (72)			
We're poor – don't have much			10.1% (20)	3.5% (3)	5.6% (2)	7.4% (2)
Causes conflict family members			18.6% (37)	17.6% (15)	33.3% (12)	25.9% (7)
Vulnerability old age...			7.5% (15)	2.4% (2)	8.3% (3)	3.7% (1)

Source: 2007 Data for Mexico City and Bogotá. Survey fieldwork (Ward, in press). 1978 data Gilbert & Ward, 1985. 2009 data for other cities is from the Latin American Housing Network study (www.lahn.utexas.org).

titleholder. During the course of settlement integration into the city “regularization” policies have often (but not always) been adopted to provide clean lot titles to almost all claimants, usually in the name of the male head, or to both spouses equally. In the cases of Chile, Colombia, and Mexico considered here, the majority of titles were in the name of the original owner dating to the time of the regularization – usually sometime during the 1980s (see Table 2a below). In a modest number of cases title had been changed, but this was almost always lot buy-outs (*traspasos*) by later arrivals, even though more often than not they had also arrived many years earlier and had lived a considerable time in the barrio.

Where the same family had lived on the lot for many years and the title was in the name of a deceased or permanently absent spouse (usually the father), there was little evidence that the name on the title had been changed. One assumes that the logic was that it was going to be left to the children who lived there anyway, and the still extant parent was viewed unequivocally as the owner, even if her name was not formally on the title. In a small number of cases where both parents had passed away we did find some interest in resetting the title to accommodate to the new arrangement of shared ownership, but very few had proceeded far down this line, either because they didn't know how, or because there seemed to be no need, or by doing so could open up a hornet's of aggravation from among the children (or all of the above). To the extent that housing market policies extol the need for clear and clean titles, requiring that these be kept up to date, then our findings point toward the need for a new round of regularization of clouded titles sometime in the future. In short, regularization may not have been the one-shot deal that was once imagined.⁸

In summary the data on second generational lot sharing suggest the following principal features. First, self-help irregular settlements

of yesteryear show minimal evidence of turnover of ownership from the first pioneers who captured the land informally. Secondly, although the average size of nuclear families has declined due to population control and smaller families, it is common for the first generation households to share the lot with kin, usually their adult children, although in some cities there is also a mixture of kin and non kin, the latter being renters (e.g. in Bogotá). Thus it is normal for many lots to house more than one household and to show modest to high lot densities. This crowding and overcrowding is especially high for the second household unit (Table 1h). A third feature is that the names on titles have rarely been changed since regularization in the 1980s. Granted, to the extent that the original owners are still alive there is little apparent need to change the name on the title deeds, and it remains unclear exactly how many of the deeds are now compromised by a named owner having died intestate. But the fact remains that unless titles are reallocated to current owners and users, an increasing number of titles will become “clouded”.

Another important finding from our research relates to the exchange value that self-help housing has generated over time, especially considering that they are largely owned by people who are poor. Table 1:1k shows the self-assessed property values provided by household respondents. Some care should be exercised with these data given that many respondents claimed to have no idea what the property was worth, but many others were able to tell us what they thought their property was worth, usually based upon neighboring sales and asking prices. We also ‘phoned a number of “for sale” signs to ascertain asking prices and it was apparent that these figures matched closely the average home values in our data. But it was also apparent that many of these properties were not selling and had been on the market for months and even years, so massive discounts could be obtained where owners found themselves obliged to sell. In addition we used property value tax assessment data in order to triangulate these reported findings.⁹ In Bogotá the median house value was \$29,370 US¹⁰; while in Mexico the median for Monterrey was \$22,600; that

⁸ Strictly speaking a new round of regularization is not required, since clean title can be achieved through normal legal processes of title change and registration, or through inheritance and property succession procedures which ultimately achieve the same end. However, as we shall detail later in this article, such cleaning of title is far from straightforward in consolidated low income settlements, and future policies will almost certainly need to contemplate “massive” and quasi re-regularization programs in order resolve the increasing number of “lapsed” property titles from the first round of regularization (See Ward, 2008; Jiménez & Cruz, submitted for publication).

⁹ While *catastral* values are significantly less than the self-assessments, the numbers are in the same ballpark.

¹⁰ In all cases local currency values are converted to US\$.

of Guadalajara was \$37,740; and in Mexico City the median was a whopping \$91,000 – around three times that of the Colombian capital Bogotá (Table 1: [1k]). Relative to the formal housing market in each city these are relatively low values, but the evidence from these and other cities in Latin America clearly demonstrate that over thirty years the first generation of irregular settlement owners have been quite successful in creating a significant asset from their self-help housing endeavors. It also underscores the existence of substantial property wealth among the poor. The question remains, however, about how those assets are being managed across generations, and the following sections will explore both the theory and the practice of inheritance and succession among low income home owners more general in Latin America, and will describe the case of Mexico specifically.

The findings are drawn from a secondary analysis of the literature about legal practices pertaining to inheritance and succession throughout the region, as well as to primary data based upon interviews with a number of public officials during the second half of 2007 and during 2009. The baseline survey data in Mexico City in the five settlements in Mexico City (in 2007) and the 2009 surveys in Guadalajara and Monterrey, all provided some preliminary insights into the dilemmas facing households in undertaking trans-generational property inheritance transfers. Although the survey did not focus upon property inheritance and expectations per se, it did generate some evidence that inheritance and low income property transfers across generations is already gaining saliency and traction among householders and policy makers. Moreover, we find that inheritance process and legal disbursements are often poorly understood, and that many households rely upon informal arrangements, or make no succession plans whatsoever.

Inheritance and succession in Latin America and in Mexico

Societies have different traditions and laws property holding, gender, inheritance and succession (Angel, 2007). Traditionally in many common law societies (which Mexico is not), male primogeniture gave the first-born son (in marriage) the rights of title and inheritance of the entire estate.¹¹ Less common is gavelkind whereby land is divided equally among sons (including illegitimate ones) and this was typical in agrarian society in Ireland, where it led to the hyper-sub-division of land into every smaller (and ultimately uneconomic parcels).

Even where laws exist to ensure equality, patriarchal thinking of male inheritance rights, and of succession of the first-born eldest surviving son often remains deeply engrained in people's minds (Varley, 2010). That may not be an issue if and when the law is invoked, at which point stereotyped understandings can be set aside; but it may become problematic where informal arrangements and understandings are constructed by parents and among second and third generation adult child stakeholders – what Varley (2010: pp. 91) calls “a web of overlapping entitlements that are to some extent negotiable”. Moreover, although women have generally made significant progress toward greater equality in terms of political rights, employment, access to education and reproductive health, other areas such as property rights have often been overlooked. While most marital and economic regimes hold men and women equally responsible before the law, culturally the same social constructions often do not apply when it comes to property rights and inheritance (ibid).

Most Latin American nations follow Napoleonic Law and the Civil Code, but there is variation between those societies that make provision for full Testamentary succession (i.e. whereby all of the

property may be assigned under a Will [e.g. Guatemala and Mexico]), and those that restrict the freedom to Will one's possessions and property, instead mandating “forced heirship” (although one quarter or one half is sometimes allowed under a will). Most marital regimes require some sharing of the property and profits generated during a marriage, unless the marriage is conducted under “*separación de bienes*” – in essence a prenuptial agreement about specific property that remains with each spouse during and after marriage.

Apart from the differences between the countries over the dispositions regarding testamentary freedom versus forced heirship, the main differences observed apply to intestate succession. In the eight Latin American countries for which patterns of succession and inheritance were analyzed (not reproduced here – see Ward & Grajeda, under review), descendants (children primarily) are first in line, and there is variation in the extent to which the surviving spouse is entitled to a share (the so called “reserved portion”). If the marriage is under common property then the surviving spouse participates in the profits of the marriage (usually 50%), and may also receive a share of the other 50% although the greater portion usually goes this descendants. In the event of no descendants (and spouse) then inheritance goes to ascendants and collaterals (depending upon the national/state law that applies).

In Mexico – as in many other nations – property rights traditionally have been closely tied to marriage. Access to ownership and control over property is conditioned significantly by women's relation to other men, mainly as wives, concubines, daughters or mothers. In fact Mexico has been a pioneer of (married) women's property rights in Latin America (Adame Goddard, 2004; Deere, 2007), and has played a pioneering role in the region by setting the legal framework for the dual-headed household, ensuring equal rights and obligations (including management of assets and community property). Illegitimate children and cohabitating couples now have greater rights than before particularly in terms of alimony and inheritance. However it is also important to note that especially in federal countries where sub-national entities are accorded considerable sovereignty and autonomy of their affairs, it is common to find important variations from one state to another (Wilson, Ward, Spink, & V. Rodríguez, 2008). One sees this quite clearly in Mexico where each of the 31 states and the Federal District have their own legislation that regulates the institutions of marriage and marital property. Furthermore, states determine the default regime that will apply where couples fail to make a specification or property division (shared or separate) upon marriage. Although the default regime in most states is that of shared property (*sociedad legal*), about a quarter of Mexican states establish separate property as the default option.¹² This underscores the need for policy researchers everywhere to understand both the regional and local contexts and laws pertaining to inheritance and succession and to take account of how these practices are likely to be shaped by federalist versus unitary politics.

Succession and inheritance in Mexico – in theory and practice

Having demonstrated that for many second generation adults a “*patrimonio para los hijos*” is fast becoming a reality among low income households in Latin America and Mexico, in this section we return to how the empirical reality of consolidated settlements intersects with inheritance and succession understandings among household members and stakeholders. In particular we wish to highlight the extent to which testamentary versus intestate succession apply in low income property relations and transfers.

¹² Campeche, Coahuila, Guanajuato, Guerrero, Hidalgo, Edo. de México, San Luis Potosí, Tlaxcala, Yucatán, and Zacatecas.

¹¹ Matrilineal primogeniture also exists although it is comparatively rare.

And where intestacy occurs (actually the majority of cases), our goal is to present some of the scenarios about what people are doing in practice, especially when this leads to conflict, disagreements, and breakdown in the process of cross generational property transfers. These scenarios emerged first in our household interview surveys, but most of the insights gained and discussed here actually emanate from the unstructured interviews and the intensive case studies that we also conducted.¹³ While care must be taken not to over generalize from these cases, the scenarios outlined later in Table 3 will serve to illustrate some of the problems associated with testamentary and intestate inheritance, and which we strongly suspect represent only the tip of the iceberg.

As mentioned earlier, Mexico is something of an anomaly compared to many other Latin American countries in so far as an important aspect of the Mexican inheritance system is testamentary freedom which allows people to bequeath and decide over the future of their assets as they see fit. Legal scholars and notary law specialists argue that the Mexican civil code is highly protective particularly when it comes to looking after destitute or potentially impoverished women. Although a woman can be badly affected by being “left-out” of their partner’s will, marrying under the common property regime will guarantee legal recourse to provision for her and for her children.

Wills and testamentary succession

In Mexico, inheritance rights are secured through two legal channels: intestate (or legal) succession, and testamentary (willed) succession. Both testamentary (and intestate) succession comprise four main stages (for full details see Ward & Grajeda, under review). Synthesizing that study: first is the search and location of a will, or if no will has been left the court proceeds to locate all legitimate heirs and to rule on the legitimacy of their claims and their ability to inherit, as stipulated in the civil code (see below). Phase 2 focuses on the appointment of an executor (*albacea*) to undertake the inventory and to appraise the inheritance value. The third phase includes all administrative processes that must be taken care of prior to the partition of the inheritance (settling outstanding debts, paying taxes, etc). Finally, the fourth stage is that of partition and the official transfer of the inheritance to the new owner (*sentencia de adjudicación*).

Not surprisingly intestate succession is much more complicated since the legitimate heirs must be determined by a family court judge who must also undertake the searches necessary to ensure that no will exists. A will, on the other hand, clearly indicates the heir(s) and the desired allocation of property and goods. Unless it is challenged, apportionment of the estate can be adjudicated by a public notary, so the whole process is much more straightforward and can usually be executed expeditiously. Today legal scholars agree that testamentary succession is the preferred practice since it is most likely to avoid long and costly legal battles, and, more importantly, it preserves the family patrimony and unity. Indeed, as we observe below, in Mexico, federal, state, and local governments have launched a series of programs designed to increase the appeal and usage of testamentary (willed) succession. But even here popular culture is often at odds with what is supposed to be relatively straightforward and uncomplicated.

Dying intestate appears to be the norm in Mexico: less than 10% of people have a will (Colegio de Notarios del Distrito Federal, 2006), a fact that was broadly confirmed in our survey in Monterrey and

Guadalajara where only 7 and 13% of owners respectively had a will (Table 2b), notwithstanding several recent campaigns to encourage families to take out a will at very low cost. We asked survey respondents why they thought Mexicans balked at making a will, and received a range of answers ranging from cultural reasons such as tempting fate (the “evil-eye”), or the common response of “*desidia*” (i.e. uncertainty/couldn’t be bothered, Table 2c – over 50%); to the fact that people didn’t know how, or they felt that it was unnecessary since they had little that was worth bequeathing. A sizeable minority felt that it would lead to conflict between the children, or to the fear that it might leave them without leverage to ensure being “looked after in their old age” (see Table 2c). Apart from the evil-eye superstition, all are legitimate reasons that give credence to the high propensity of “informal” arrangements that families undertake instead. Indeed far and away the majority who were thinking about inheritance and succession responded that, while they had made no will, they had made informal arrangements and clarified the expectations about who would receive what after their death (Table 2b). The question remains, therefore, about whether those expectations and implicit agreements would hold, not least since they often jibed with the provisions of the Civil Code regarding intestacy.

In Table 3A–D we present twelve cases that arose from our qualitative case study research. We have divided these cases into four sections each of which characterizes a common set of scenarios that we have encountered and which bear discussion here. These scenarios are: A) Testamentary Succession (Wills); B) Intestate Succession where families may have made informal provisions which they think will hold sway; C) Intestate Succession where there are no such informal understandings; D) Intestate Successions with Weak or Poor Understanding of Wills; and E) Intestate Succession cases in which Informal Understandings Appear to be Respected. These 12 cases are presented in summary form in the Table, and several are highlighted in the text below. It is extrapolating from these cases that we will address policy implications and approaches in the final section of the paper.

Testamentary succession: scenario & conflictual Case 3A-2

Wills, gender, and inheritance claims in the Rodríguez family. The first of several case studies is illustrative of how cultural stereotypes about male (primogeniture) still exist within Mexican society, as well the problems that can arise when a Will is challenged by people who can ill afford legal costs since they live in relative poverty. This case involves a dwelling in one settlement in Mexico City where the original owners (Sr. & Sra Rodríguez López) had died many years before leaving five surviving children. The title remains in the late Sra. Rodríguez’ name, despite the fact that she passed away 14 years earlier. In her will she stated that the house should go to her (then) five surviving children. It actually excluded one of Sr. Rodríguez’ sons, who also lived locally, and was the love child of an extra marital affair. Elena (a daughter and one of the Sra’s heirs who lives on the lot) is being threatened with eviction by her half brother (the love child) who claims that, as the only surviving son of Sr. Rodríguez he is the rightful owner and has a right to protect the family patrimony. The claimant son has already spent almost US\$2000 in legal fees and is taking the matter to the family court to press his claim and rights over the family home. Several issues arise here: First is his assertion that, as a male heir, he has paramount claim over females. This is quite spurious: indeed, under 2008 legislation of “Women’s Access to Violence Free Life” this might be considered *violencia patrimonial* for which he could be prosecuted by Elena. However, that aside, if the deceased Sr. and Sra. Rodríguez married under equal shares property law (as is likely), then the half brother might well be able to claim his (father’s) share of the property provided that he can prove that he is the son of Sr. Rodríguez (uncle to Elena).

¹³ These follow up interviews were undertaken by Grajeda in Mexico City, by Ward and the research team in Monterrey, and by Jiménez and Ubaldo Velázquez and the Guadalajara team.

Table 3

A. Scenarios of testamentary succession cases in Mexico. B. Scenarios of intestate succession cases where informal agreements exist between family members. C. Scenarios of intestate inheritance and succession cases where no formal agreement exists between family members. D and E. Additional scenarios of intestate succession cases where informal agreements are respected and where there is a weak understanding of Wills.

Scenario	Background details	Procedure	Outcome & future scenario	Policy arena and relevant approaches
A. Testamentary succession (Will) cases				
1) Guadalupe. Owner has a Will and has a clear understanding of her rights to dispose of her property and to change her Will.	Ms. Zaragoza, owner, divorced, has a Will and full title to the property and has made her dispositions to her children. Now wishes to alter the will to include a grand-daughter. She is acquiring a new plot and making arrangements to her house, so as that each of her children has an independent house.	<ul style="list-style-type: none"> • Make an amendment to the Will. 	<ul style="list-style-type: none"> • Provides secure means of disposal of property & emotional security for her in her old age. • Her authority over the patrimonial home is clearly established • Provides for inheritance to 3rd generation (in this case an illegitimate grand-daughter who would otherwise be left at the mercy of her stepfather. • Good prospects of resolution 	<ul style="list-style-type: none"> • Good example of how testamentary succession can operate successfully • Good example of how to change property titles after important events: in this case her own divorce and after deciding to include a grand-daughter in her will.
2) Mexico City. Parents dead. Father died intestate. Mother left a Will excluding an illegitimate child of husband. Latter now challenging ownership and claiming for himself.	<ul style="list-style-type: none"> • Sr. & Sr. Rodríguez López) died many years before leaving five surviving children. In fact the title was, and remains, in the late Sr. Rodríguez' name despite her having passed away some 14 years earlier, and her Will stated that the house should go to her (then) five surviving children. This applies only to her 50%, the other 50% is intestate. • She excluded from her Will one of Sr. Rodríguez illegitimate sons. • Elena – a daughter and one of the Sr.'s heirs lives on the lot – and is being threatened with eviction by her half brother (the love child). He claims, with no legal ground, that, as the only surviving son of Sr. Rodríguez he is the rightful owner and has a right to protect the family patrimony. 	<ul style="list-style-type: none"> • Illegitimate son cannot claim the whole lot but may be entitled to a part share of his father's 50% if prove that he is father's son and if their marriage was under the regime of "Sociedad Legal" (equal shares) 	<ul style="list-style-type: none"> • In flux and the onus on illegitimate son to prove that he has rights on part of the 50% part share. • Claim will need legal review. • Only when settled will Elena's share be defined. • Ultimately title will need regularization. • Uncertain who will win, as the amount of money that each part has to invest in the procedure to challenging the Will, etc. 	<ul style="list-style-type: none"> • Civil code legal process. • Maybe legal action against claimant. • Dispute resolution & legal advice. • Legally he has the right to be given his share of the property (1/6 of the father's intestate 50%). • Re-regularization^a
B. Intestate succession cases with informal agreements				
3) Monterrey. Both parents died intestate w/o making formal title change to daughter. Informal agreement that she would become the owner is no longer respected. Needs to negotiate with siblings for cession of rights. Complicated and problematic case.	Parents died intestate & father's name on title. Daughter lives in the dwelling with children and 3 grandchildren. Sr. Socorro is one of three siblings who are beneficiaries, one of whom has died. She paid for the house construction through remittances sent back while she worked in the USA. Informal understanding that daughter would be the eventual owner. No title change, however. Now she needs her brother and her dead brother's heirs to agree to cede their two shares to her. While her brother has agreed, two of her nieces who live in Matamoros are demanding their father's share (= 1/3 divided among 7 nieces and nephews)	<ul style="list-style-type: none"> • Needs to negotiate with her brother and with nieces and nephews in order that they cede their rights to her. • Only 2 holdouts (2 nieces) so may not be a full 1/3 share that is required to achieve the buy out • If she can get cession of rights then she can legally proceed with probate and put the title in her sole name 	<ul style="list-style-type: none"> • In limbo because daughter cannot afford to negotiate with nieces. • She also has cancer and feels that her family is vulnerable. • No resolution likely in the immediate future. If she dies then it will probably become more problematic and will become a clear 3 way split between the descendants. • Lot title requires regularization • Prospects not good. 	<ul style="list-style-type: none"> • Needs to be able to secure finances that might facilitate successful negotiation and buy out. • Then, legal process to negotiate buy out shares of other beneficiaries. • Title could then need to be transferred to her name. Re-regularization • Prospects not good.

- 4) Guadalajara. Husband died intestate w/o making formal title change to his wife. Informal agreement that she would become the owner is no longer respected. Had to obtain an order of succession (juicio sucesorio) in order to keep her house because 16 children had a claim over half the intestate house.
- 5) Guadalajara. Owner has no Will but wishes to leave the property to her goddaughter. Confused about Wills.
- 6) Guadalajara. Owners have no Will but have made clear informally what expect.
- 7) Mexico City. Owners died intestate. Informal agreement that four sons would inherit. The son of one (now dead) is claiming his share.
- Husband died intestate. Both of them built the house. She actually helped the builders with the construction. He never wanted to make a Will. Made informal agreements with all his children that she was going to be the owner. However, once he died, the children from his previous marriage wanted to evict her from the house. To avoid this she reached a legal settlement with all of the 16 descendants, who had a legal claim over half the property: 6 were children of their marriage, 8 from three previous marriages and one a "love child".
- The owner, Mrs. Cortes, has no children and wishes to leave the property to her goddaughter. She is uneasy about making a Will to ensure that this happens because it is rumored that those that inherit can claim the property before she dies.
- Husband and wife, Mrs. & Ms. Aguilar, have several properties built up over time and understand that a Will can disburse property as he wishes. But worried that children will follow through. The family house, in one of the sons' name. The father "lent" him the title to be used as their son's collateral for a mortgage to get a new house. The arrangement being that once the mortgage is paid, he will put the name of the family house back in the father's name. There is a strong feeling among the parents and children that the family house should be for all the children, to be used in case of need.
- Original owner's four grown sons live on the lot with their own families and in some cases the grandchildren. While the matriarch has also since died, it appears that there was consensus that the property belonged to the siblings, and no attempts were made to change the title from his name. One of the brothers had since died, and although he had reportedly renounced his claim there was nothing in writing to that effect. However, one of his sons (grandchild) was now asserting his claim to part rights in the family home (notwithstanding his apparent lack of need, since he now lives in Cancun).
- Nine of them legally, and free of charge, ceded their rights to her.
 - She had to settle with six heirs, who wanted to be paid before they would legally cede their rights to part of the inheritance.
 - Paid for the order of succession and all expenses associated with it (fines for building without the appropriate construction permit, change of name, etc.).
 - The "love child" did not make a legal claim of any kind. Nobody new about his existence until the funeral.
 - Having full title in her name, she must make a Will to ensure that it goes to the goddaughter.
 - If she fails to make a Will then the property will be inherited by her blood relatives (siblings and their descendants) given that both parents are dead.
 - Husband and wife need to make respective Wills to leave their various properties to their children.
 - If both parents die, before the son puts the family house back in the parents' name, legally he will be the owner.
 - If the informal arrangements holds, the son will change the title as promised but there is no legal papers that will support this informal arrangement
 - Case needs to be considered under succession law of the Civil Code.
 - Their three daughters supported her with their time and money, to obtain the order of succession which has taken two years so far.
 - She will have the house in her name after the order of succession is made.
 - She hasn't made a Will yet, but has made informal agreements.
 - She'll do it after the probate is completed, even though she was told that she could make a Will at any time.
 - In flux and by leaving things open ended the informal arrangement will not stand.
 - If she does not have title then she will need to negotiate the cession of shares from her sibling and their families.
 - In flux, but if no Will then all 7 properties will be distributed according to Civil Code.
 - Legally, the family house is in one of the brothers' name. Only, respect for previous agreements will change this or there will be conflict amongst siblings.
 - Civil code legal process.
 - Re-regularization
 - Needs to conclude all the legal procedures to have the title of the house in her name
 - Needs to make her own Will, to avoid future problems between her own children.
 - Prospects are very good.
 - Legal procedures to change titles to the name of the spouse who survives, need to be cheaper and faster.
 - Not charging for having put up a building without a legal permit will reduce costs.
 - Improve information to dispel myths.
 - Civil code legal process.
 - Re-regularization
 - In flux.
 - Likely to be time consuming and costly.
 - Grandson has a legitimate claim.
 - Will require negotiation and probably the buy out of grandson claimant.
 - Civil code legal process.
 - Dispute resolution & legal advice.
 - Ultimately re-regularization of title (may be under co-ownership of sons?)

(continued on next page)

Table 3 (continued)

Scenario	Background details	Procedure	Outcome & future scenario	Policy arena and relevant approaches
C. Intestate succession cases with no informal agreements				
8) Guadalajara: Intestate death, surviving spouse negotiates the other 50% to get full ownership	Husband died without leaving a Will. Given that they were married under <i>Sociedad Legal</i> (equal shares), widow receives 50%, and children the other half.	<ul style="list-style-type: none"> In order to receive full ownership widow must take legal steps whereby the beneficiaries (her children) cede or sell to her their shares (total 50%). Negotiation with children and legal affidavit required. 	<ul style="list-style-type: none"> Successful outcome after payment to children for them to cede their rights. Sons, Daughters and inlaws respectful of her wishes and her authority to pursue full ownership But she was obliged to pay for half of the home that she had built with her husband and that she already considered her own. 	<ul style="list-style-type: none"> Legal process to negotiate buy out shares of other beneficiaries. Successful case. Title would then need to be transferred to her name (re-regularization) Widow to make a Will to dispose of property and avoid repeat of downstream intestacy?
9) Guadalajara. Owners died intestate and no informal agreement or under-standings. Children now dispute ownership.	Original owners, Mr. & Mrs. Zaragoza died, neither having a Will. Several children and a grandchild who the original couple had adopted as their son and he lives in the home. One of the children holds the title (in parents' name) and everyone recognizes his/her authority to make decisions about the house. But conflict among those living there about ownership.	<ul style="list-style-type: none"> Need to go through legal process to divide the property among the beneficiaries (including equal share to adopted [grand]child). 	<ul style="list-style-type: none"> In flux. Prospects not good. Ownership will be shared equally among children unless agreement by some to cede their share. Legal process likely to be a long drawn out process unless there is agreement. 	<ul style="list-style-type: none"> Post probate, title regularization. Joint family ownership option? Re-regularization
10) Guadalajara. Wife and family abandoned. Ex husband now wants to move back on lot with his new partner.	Mrs. Santillán and children, in situation of extreme poverty and husband abandoned the home and 8 children (5 of whom live on the lot). Husband now want to move back with his new partner and she fearful that he will drive them off the lot (having tried before).	<ul style="list-style-type: none"> Married under "<i>Sociedad legal</i> (equal shares) so she owns 50% and he can lose his half for "abandonment". Making a Will is low priority for her at this moment. 	<ul style="list-style-type: none"> In flux. May need police protection. She cannot secure 100% due to abandonment. Ultimately needs a Will to assign her half. But if she and ex husband die intestate, the property will go to all children (hers and any additional ones) and would be complicated. 	<ul style="list-style-type: none"> A Will would secure 50% of the property. Legal advice needed to protect wife and children. Protection services required to ensure that family not violently and illegally evicted. Title re-regularization if in his or their joint names.
D. Intestate succession cases with poor understandings about Wills				
11) Guadalajara. Couple getting divorced believe that not take out a Will until that settled.	Couple in process of divorce and it is legally settled that she, Mrs. Moreno, will keep one of the houses and a vacant lot. She wants to ensure that her adopted 4 year old son, will inherit but believes that she needs to settle the divorce before making a Will. She is in her fifties and worries very much about dying without leaving her only young son unprotected economically.	<ul style="list-style-type: none"> Can make out a Will immediately if she wishes. 	<ul style="list-style-type: none"> Without a Will her son will inherit but he would need to go through legal process to become the owner. 	<ul style="list-style-type: none"> Improve information that a Will can be made at any time.
E. Intestate succession cases with informal agreements that are respected				
12) Mexico City. Both parents died intestate and beneficiaries going through formal probate.	The aim is to put the family home under the joint names of the siblings. However they can't afford to hire an attorney so the court will provide one for them making this likely to be a long and drawn out process. Laura – the daughter respondent – said that the process had convinced them of the need to have a will, which she proposes to do as part of the September Will program.	<ul style="list-style-type: none"> Case needs to be considered under succession law of the Civil Code. Subsequently regularize title in joint names. 	<ul style="list-style-type: none"> In process by agreement but likely to be long drawn out process. Eventually title will need to be regularized to the joint owners' names. 	<ul style="list-style-type: none"> Good example of how intestate resolution can work, albeit slowly. A Will would have avoided this problem. Re-Regularization required.

Source: Intensive case study family histories and interviews in Mexico City 2007 (Grajeda, 2008), and in Monterrey and Guadalajara by the authors in 2009.

Only in one case (#1 Table 3A) did we find an example of a Will was being used effectively, this being a case where a woman in Guadalajara was about to change her Will in order to add a grandchild as beneficiary. In another case (Table 3B, #5), the owner has full title and no children, and wants to leave the property to a goddaughter, but she is uneasy about making a will due to her belief that it can lead to the beneficiary claiming the lot prematurely. (It is possible that she is confusing a Will with an “*inter vivos*” arrangement discussed below.) But if she wishes to ensure that her goddaughter is the beneficiary, and wants to avoid the property going to her blood relatives, then a Will is the obvious solution. This is a fairly typical example of how poor understandings of the testamentary process can dissuade people from making a Will, who then end up dying intestate, leading to undesired consequences which could otherwise have been avoided (Scenarios Table 3D). Another common misconception is that one must settle other legal matters (such as divorce) before one can make out a Will (case Table 3D #11).

Dying without a Will: intestate succession

Ten of the twelve case studies presented in Table 3A–E were products of intestacy. In theory where a will is lacking, declared void or invalid, revoked and/or contested, intestacy laws prevail (Codigo Civil, Artículo 1599) and the civil code provides a straightforward order of succession formula whereby the deceased's descendants, spouse, ascendants, concubine, and (up to 4th degree) collateral relatives, are entitled to the bulk of the inheritance (Art. 1602–1604). According to the order of succession formula descendants are first in line and children receive the bulk of property in equal shares (Codigo Civil, Art. 1607–1614). The civil code makes no distinction between legitimate and illegitimate children in terms of inheritance. Although they are second in line, where a surviving spouse continues to coexist with his or her children, then that parent is entitled to a share equal to that of a child (CC, Art. 1608–1624). Thus, after children, the next in line in the inheritance cycle are spouses and ascendants according to the civil code with provisions to include those cohabiting for a minimum number of years, or where children are born to the couple. If there are no surviving children, then the spouse shares the assets with the ascendants (CC, Art. 1626), the exact portion depends on the marital regime under which the couple exchanged vows. Finally, the last chain in the succession cycle pertains to collateral relatives (CC, Art. 1629). One again it must be emphasized that these codes vary by state.

Intestacy laws are not always clear-cut or easy to interpret, and intestate succession cases often result in long and costly legal battles and trials. Given that there are major time and financial costs associated with formal intestate succession, and that few people make a formal will, many lower-income Mexicans with property are likely to resort to informal (or indirect) inheritance mechanisms of property transfer – as we show in Table 3. Such informal arrangements rarely comply with the norms of a legal conveyance and title provision, and will encounter major problems if there is an intention to sell the property, or to transfer it to another titleholder. It can also be problematic if there is disagreement among the heirs, as we describe below.

Scenario B) intestate succession where families have an informal arrangement

Case 3B #3 where an informal agreement is contested but is eventually resolved by the widow through the courts – at a cost. In this case the husband was very reluctant to make a Will. Instead, he made informal agreements with his 15 children, but this didn't work out. After his death, legally all his heirs were legally entitled to

a part of the 50% share that was their fathers who had died “intestate”. Thus, the widow and children had to go through the process of getting a succession order (*juicio sucesorio*) in order to change the title of the house from the husband's to the wife's name. Ten of these children were from three previous marriages, along with a “love child” who was born before he married for the first time. The conflict began when some of the children of the husband's previous marriages threatened to evict the Doña Perfecta (the widow) from the house that she had helped to build with her own hands. She negotiated with these heirs and nine agreed to pass on their rights to her without further claims, but another six (including one of her own sons) asked to be paid their share of the inheritance. In this case the lawyer who took the case, was a family friend and sought to ensure that the legal process unfolded fairly. For example, he kept legal delays to a minimum, and he refused a bribe from one of the sons of a previous marriage who wished to evict the widow from her house. In 2010 it appears that almost completed all of the legal procedures are completed (these have taken more than two years). But the process has the widow a considerable amount of money and time, and has created conflicts between the siblings, as well as between them and the widow. In this case her economic situation was not so dire (compared with many) and she had the support of her three daughters such that she was able to afford the expenses and the time needed to see the case through. However, had she been poorer with less family support, or if the lawyer had taken the bribe, the outcome might not have been so successful. All this suggests the urgent need to make legal procedures for changing the title of a house more expeditious and less costly, probably with a waiver of fines and taxes for having self-built without a legal permit.

Case 3B #7 the Gutiérrez family, where an informal agreement unravels. This is another case in Mexico City and derives from a situation where the late owner died without a Will after internally sub-dividing his property to create a dwelling structure to accommodate his family's needs. The deceased's four grown sons live on the lot with their own families and in some cases the grandchildren. While the matriarch has also since died, there was consensus that the property belonged to the siblings and no attempts were made to change the title from the father's name. One of the brothers had since died, and although he had reportedly renounced his claim there was nothing in writing to that effect. However, one of his sons (a grandchild) was asserting his claim to part rights in the family home (notwithstanding his apparent lack of need, since he now lives in Cancun).

This conflict will need to be resolved through an interstate succession trial which is likely to be costly. The family has agreed to share the costs, although they feel that given that they are the ones splitting the costs of dealing with the succession, only they should be entitled to the property. (Clearly this has no legal standing, although it could be an issue for further downstream conflict.) As observed earlier, Mexican law provides that inheritance go to the immediate descendants, either directly (*por cabeza o linea*), or indirectly (*por estripe*). And although the law provides for inheritance to those in closest proximity (the children in this case), there is the exception of “substitutions by representation” – in this case the grandson who would be considered a legitimate heir in representation of his deceased father.

Case 3B #3 the del Socorro family in which an informal understanding is challenged by one of the heirs, throwing the process into confusion and creating an impasse. María del Socorro is the current owner of a home in Valle de Santa Lucia in Monterrey having inherited the lot from her parents. She went to the United States to work, and in 1976 her remittances paid for the lot purchase and for the later

house construction (which her father oversaw). María, her parents, and her daughter started living there around that time although she continued to work in the USA, returning regularly to visit. She was the victim of domestic abuse from her husband although she never actually married on the advice of her father since it would have placed her health and pension rights in jeopardy (he had served in the military). The title was put in her mother's name since her father had already died, and when her mother died intestate both brothers recognized that the property was María's given that she had paid for it, but nothing was put in writing. Nor was there any attempt to change the title to her name – a grave (but common) mistake. One of her brothers, who lived in the border city of Matamoros, has since died, while the other who lives locally has indicated his willingness to formally cede his share of the inheritance to her. However, two of the dead brother's ten children (her nieces) are claiming the third due to their defunct father. As things stand, by law, if they pursue their claim then 1/3 of the property will need to go to that side of the family (to be split 10 ways if nephews and nieces claim their inheritance).

This is a good example of the problems that arise when there is: 1) a failure to make a Will; 2) and/or to change the name on the title; 3) or to get an informal agreement notarized. Thus, by law, one third will go to her brothers' heirs unless she can negotiate a buy out of their share. If she can find some resources then this may be a real possibility, given that the claims of her nieces will be moot so long as María and her family are alive and living on the lot. Unless they come to some negotiated agreement the process is likely to take a considerable time to be resolved, if ever. But by the same token, she (María) cannot change the name of the title, nor can she secure the home or sell it, so the situation is at an impasse.

María del Socorro is very concerned about leaving her daughter and three grandchildren vulnerable, not least since she has also recently discovered that she has a brain tumor and needs treatment. Indeed, she has created an elaborate altar dedicated to the Santa Muerte in one room. She has a son and daughter (and grandchildren) living with her, and if, as she indicated, she wishes to favor her daughter over the son, then effectively her best immediate option would be to take out a will naming the daughter as heir (of her share). As things stand her 1/3 would be shared by both of her children. Moreover, should she die, her other brother may no longer so well disposed to cede his third to her and her family, highlighting a further problem of informal arrangements: namely that agreements can always be revoked unless there is something in writing (such as an affidavit).

Both of these intestacy cases (and will case #2) involve third generation claimants stepping up under the "substitution" descent provision. Further research is required about whether this makes for an easier or more difficult negotiation and cession of rights process than in second generation cases.

Scenario E. intestate succession cases in which informal understandings are respected

Case #12. The case of the Bravo family in Mexico City is an example of how intestate succession cases can be made to work (albeit very slowly) when the heirs are in agreement. It comes from Santo Domingo colonia, in the south of Mexico City and involves the Bravo family who, after their mother's passing, had resolved to present the case before a family law judge and to put the family home under their joint names. (In fact there was an earlier intestate succession trial pending to transfer the property from their father's name to that of the mother, now made moot by her death.) However the problem arises that since they cannot afford to hire an attorney the court will have to provide one for them, and this will make the process likely to be a very long and drawn out process. For example it has taken the judge eight months to appoint an executor

(*albacea*), when it typically takes less than one month for a Will. The daughter, Laura, said that the process has convinced them of the need to have a Will, which she proposes to do as part of the September "Month of the Will" program.

Scenario C. intestate succession without any prior arrangements or understandings

If our data are representative about many low income property owners dying intestate without making formal or informal arrangements is the norm, then the following scenarios are likely. Case #9 from Guadalajara, for example, is probably the most common – a straightforward Month of the Will division of inheritance between children (including an adopted child) – in which those who live on the lot would need to secure the cession of rights (or buy out) from their siblings. Joint family ownership might be an eventual ownership, but it will be a long and drawn out affair through the courts.

Another case (#10) – unfortunately all too frequent in Mexico – involves a case of extreme poverty in which a woman and her children have been abandoned by the husband, who now wishes to move back onto the lot with his new partner, and kick out the family. While she is protected by the law, and he could lose his half share in the property on the grounds of abandonment, she clearly feels very vulnerable, such that some sort of police and legal protection is likely to be required in her particular case.

Low income housing inheritance in Mexico: the policy making implications for second and third generations

Regularization and "re-regularization"¹⁴

No less than eight of the 12 cases described in Table 3 have lapsed into irregularity and will require a new generation of regularization policies in order clear "clouded" titles of home ownership that have arisen, mostly due to intestacy. Where property inheritance and succession are disputed, then title transfer cannot be achieved until the matter is settled definitively. Thus titling and regularization fall behind the curve of testamentary and inheritance proceedings, and this is likely to be a major impediment to any attempts at expeditious and efficient re-regularization.

As we mentioned at the beginning of this paper in many countries regularization of property titles has been a conventional policy wisdom since the 1980s. The need for a full legal process (as against customary practices) to convey titles and full ownership is still debated, but there seems little doubt that clarifying "clouded" titles can help to reduce uncertainty and vulnerability of householders and, in many cases, it does help to leverage the provision of infrastructure and formal intervention from the state. It also "anchors" property within the administrative system making more feasible and practicable planning, taxation, and land use controls for local government. The extent to which title makes the market work more effectively and enhances opportunities for low income families to exchange their properties is less obvious, however, even though intuitively one would imagine this to be the case (but cf. Ward, 2002, *in press*). In several cases that we studied in depth, where a home was sold without "clean" title, it became apparent that the price negotiated was below market since the new owner had to pay the costs of clearing the title and putting it into his name. Even more hotly debated is the mantra that titled property ownership enables the poor to leverage credit and become players in the market place – in de Soto's (2000) terms, unlocking the "mystery of capital" (but see Bromley, 2004; Gilbert, 2002; Varley, 2002; Ward et al., 2011).

¹⁴ See footnote number 8 for further commentary on re-regularization.

Another frequent argument in favor of title is that it is a necessary step to encourage home investment and consolidation. This, too, is contradicted by evidence showing that many self-help builders amply invested and consolidated before title regularization ever appeared on the horizon. Relative security of *de facto* tenure was constructed in other ways, and often had little to do with the niceties of law and full legal title (Farvacque and McAuslan 1992; Varley, 1987). And while we concur with the findings of that research and those arguments that challenge the imperative that first generation of self-builders required full legal title before they would undertake making home improvements and extensions, we do believe that in future title clarity will be crucially important for second and third generations. For them, clear title or shared title is likely to be a prerequisite if they are to be persuaded to undertake substantial investment to retrofitting and rehabilitate the properties in which many of them continue to live (see case #4 where the two sons who share the lot are no longer investing in the home since the title is effectively owned by their sister who lives in the USA). Although second and third generation households may continue to live on the property as before, why rebuild and improve the home if the capital invested will ultimately be inherited and divided as shares by one's siblings? Thus new title arrangements must be made to ensure *de jure* ownership or co-ownership. Similarly, if financing is to be made available for housing rehab and improvements, some sort of title is likely to be required. The possibility of enjoining loans to provide for title regularization on behalf of a beneficiary may facilitate the capacity of that individual to buy out other claimants – for example in the case of María del Socorro (case #4) who, if only she could get some financing, could probably settle negotiations with her two recalcitrant nieces.

The challenge, therefore, is how to get “there” from “here”? What are the policy options for moving from the newfound informality and illegality of intestate property and title outcomes, and how far do contemporary legal processes and procedures toward formality and compliance hinder, rather than help? The regularization and property title literature are full of examples where the best of intentions have foundered on adherence to formal legal regimes, practices and inflexibility (Fernandes & Varley, 1998; Varley, 1987, 2010).

Retitling

Low income home owners clearly distinguish between two ways of passing their property onto their children or other relatives: either through a will, or by making arrangements about the disposal of the property before they die. One form of property transfer is to make a “live bequest”. In one such case in the study settlement of Isidro Fabela in Mexico City, the original male owner had bequeathed his property to their nine children through an oral agreement. The children perceived that they had inherited *en vida* or *inter vivos* before the “testator” had even passed away. Indeed, the property owner had sub-divided the lot in order to build nine different apartments, which he said now belonged to each of his nine children. But while this worked in that particular case, and while such informal inheritance arrangements are quite common, ultimately they may create ownership expectations that, if tested legally, could be found to be groundless. And, as mentioned earlier, if these arrangements contradict the formal property title of the original (or actual) owner, then no matter how clear is the physical sub-division of the property, it will be difficult to sell at the full market value unless individual titles have also been transferred.

A more judicious approach would be to make a formal transfer of property through an *inter vivo* arrangement, which offers a quicker and easier alternative to that of making a formal will.

Several of the cases already discussed in this paper would be far less problematic if only titles had been transferred in advance of an owner's death. In the 2007 Mexico City study where one observes an especially high proportion of shared lots among siblings (Table 1), we found that a small handful of families were actively exploring this option. In another case, a male property owner whom we interviewed in Chalma Guadalupe colonia in the north of the city offered us a tour of his lot, showing how the sloping lot was divided into two, and he and his wife lived in the lower section, while his son and family lived in the upper part. While this is not unusual, this particular respondent had formally made over the lot to his son, but he retained a life interest in it.

Other scholars have also noted this trend in Guadalajara Mexico (Varley, 2002), although as she notes when discussing inheritance practices, elderly owners are sometimes leery about prematurely transferring their property to one or more “heirs” for fear of themselves being driven out (see also Table 2 above), and/or that they will lose their leverage over sons and daughters (especially) to look after them in their old age. In these circumstances it is probably better to make an *inter vivo* arrangement and to maintain a life interest (usufruct) in the home. And even though these arrangements can be revoked (where justification is proven), few home owners appear to know about the possibility of making such an arrangement. In an effort to avoid putting the elderly at risk, the federal government, through its institute for the elderly (INAPAM), has launched a series of low-cost testamentary programs so that elderly do not have to resort to methods that may make them vulnerable.

Arranging inheritance through testamentary procedures & policy making

In Mexico today there is widespread consensus that more should be done to encourage testamentary succession. Intestate challenges are three times more frequent than testamentary ones. Not having a Will is problematic where claims are contested and may obstruct the transfer of title and the capacity to dispose of property in the market place. However most low income households appear not to bother with such matters until they are faced with a lawsuit or until they try to sell the family home. Therefore it is hardly surprising that federal, state, and local governments are eager to address the issue of intestacy, as well as property irregularities and ambiguities that result. These efforts, broadly labeled “testamentary programs” seek to give greater security to property ownership and tenure by establishing a deeper and broader “testamentary culture”. At the federal level, since 2000 the last two administrations have launched a series of property regularization and Will-making programs aimed at reducing intestate succession, thereby avoiding long and costly legal battles over property. The main federal programs are: “September: Month of the Will”; “Low-cost Wills for low income Mexicans”; and the “November: Regularize Your Property” program. All three programs are interrelated, of course, and have come on line sequentially: the low cost Will-making program being introduced in 2003, while the November regularizations program was launched in 2008. These programs are designed to make wills more affordable – costing around US\$117 in 2007.

Because these programs have been in place for only a relatively short period it is difficult to assess their full impact. But it is clear that some are having an effect, and that they are quite widely known and talked about – particularly during the September monthly campaign period. (Several of those whom we surveyed and who had a will had taken advantage of this low cost program.) Between 2003 when it was launched and 2006, 45% of all Wills registered at the national level were acquired during the months of September (and October), which is when the general

public can get a will at half price.¹⁵ The “low cost will” program (2007) is permanent, and is designed to benefit lower-income individuals whose monthly income is less than four times the minimum wage of the federal entity in which they live. In the capital Federal District this means that those earning roughly 6000 pesos (US\$587) or less a month, are eligible. As a result, residents of the Federal District would (only) have to pay the equivalent of 6 days minimum wage – approximately 300 pesos for a will (US\$29.45).

The November property regularization campaign is somewhat different, aiming to assist with title transfers (some of which may have arisen from *post mortem* or *inter vivo* inheritance) for those already involved in some sort of succession process. It allows them to undertake the notarization steps required to secure the property and may embrace one of the three following procedures: testamentary succession; private acts such as donations; and property titles and final judicial sentences in succession cases, although many of the details are still being worked out.

While the aforementioned programs are a step in the right direction – mainly by attempting to do away with irregularities in property ownership and inheritance – they fall short in so far as they are likely to be undermined by the realities of the succession process. How so? The problem we envisage is that these federal testamentary programs only reduce the costs for *acquiring* a will, and do not take account of the downstream costs of actual *proving* the will (probate). There is a whole gamut of legal procedures and costs to be considered such as succession-related notary services and tax obligations, and these can be prohibitively expensive for many, especially for low income property holders.¹⁶ Tax obligations are significant (normally around 3–5% of the value of the property), although some state governments do offer significant discounts. Notary fees are also very high (varying between 7 and 12% of the property's value), and combined with the taxes these costs will make inheritance unappealing for a large part of Mexican society – rich or poor. But for the latter, unless these downstream testamentary shortcomings are addressed, it seems inevitable that informal inheritance arrangements will remain widespread in the former irregular settlements in Mexican cities.

This paper has shown that the large majority of low income households who acquired land and self-built their homes in irregular settlements some thirty or more years ago, are today sharing and bequeathing those homes to their adult children and grandchildren. And while not all children benefit, or expect to benefit in this way, many others do. Often already living on those lots with their own young families, there is an urgent need to refurbish, renovate, and retrofit the dwelling structures in order to accommodate to the new multiple household arrangements that we described in the earlier part of this paper. The question that we now wish to confront is how the evolution of second and third generation living arrangements translates into possible future ownership; the routes to inheritance and succession; the nature of shared property titles, and the mechanisms for title transfer from aged parents to children.

There are two major sets of juridical policy issues to be addressed here. First, how to develop new titling arrangements that will reflect shared ownership, and create simple and affordable methods of regularization to acquire clean title? Second, how to

encourage greater participation in testamentary and formal succession transfers of property among second and third generation of low income families?

*Policies of land and title regularization*¹⁷

As we saw earlier, Mexico has had considerable success in developing efficient and low costs policies of land regularization, and almost all of the first generation owners in irregular settlement benefited from one or other of those programs. However, there is little awareness about the ways, and the extent to which much of that earlier regularization of titles effort is becoming unraveled, as the original owners die or bequeath their properties to their children. Our data suggest that there already are a substantial proportion of dwellings in which the title is in name of a deceased spouse, and this is certain to rise in the future, making necessary a new round of re-regularization (Ward, 2008; Jiménez & Cruz, submitted for publication). The “November title regularization program” offered in the Federal District by Mayor Marcelo Ebrard (2006–2012) aims to make the property registry records and the property tax assessments more efficient, thereby raising the city's direct internal revenues.¹⁸

More recently, too, regularization programs are anticipating many of the clouded titles problems that arise from informal transfers of possession and from those related to inheritance and succession. In the Federal District a new program offers major cost reductions in the cost of reissuing property titles to a beneficiary (ies) so long as the value of the property is valued less than 1.582 million pesos (approximately US\$125,000), and “so long as there are no inheritance conflicts”. In short, the beneficiaries must be in agreement. Where this is the case, then the latest initiative will be an excellent means to expedite titles irrespective of the existence of a Will or of multiple beneficiaries. The total costs of taxes and fees range between US\$953 on a property valued around 300,000 pesos (\$23,771) to US\$1600 for a home whose property tax assessment is 800,000 pesos (\$64,000). Major reductions though these represent, the costs remain significant.

In addition, new programs need to be developed to facilitate the transfer of title or to provide some sort of documentation that the new stakeholders have in their inherited dwellings. Title re-regularization could generally be expected to work well where it was low cost and expeditious, and where the lot or dwelling structure can be divided into clear equal parts (as a separate section of the lot, or as a separate floor/apartment), so long as there is private access to each dwelling unit either through a shared alleyway along one side of the lot, or by staircase from a common area (as in Fig. 1a and b). But for many (probably the majority), it will be very difficult to divide up the lot or property in ways that make for tidy division and titling of the separate parts. Thus new regimes of titling or ownership registration need to be developed built around the concept of “family property” and more pluralistic or hybrid legal structures (Varley, 2010). In Mexico “family condominium” arrangements have been proposed comprising joint property in which each stakeholder is identified, and while these appear to be quite flexible instruments, there are prohibitions on resale and it is nigh impossible for one stakeholder to dispose of his or her part,

¹⁷ See footnote #8.

¹⁸ (Gaceta Oficial del Distrito Federal, October 8, 2007). The idea behind these modernization efforts is to ensure that major property related transactions can be done through the internet. The Spanish Firm *El Corte Inglés*, is in charge of this cadastre modernization effort at an estimated cost of US\$40 million. In addition, a “virtual” cadaster office will be created online and will include a wide array of services from cadastre-based payments (*impuestos prediales*) to digitalized cadastral cartography.

¹⁵ Notary fees vary significantly from one federal entity to another; however, they typically range from \$1200 to about \$2500 MXN pesos (\$117.41 to \$244.60 US dollars).

¹⁶ These are referred to as *Impuestos Sobre Adquisición de Inmuebles* or in some states as *Impuesto por el Traslado de Dominio*. These are federal taxes but if states have a similar tax, these may be bypassed.

unless everyone agrees to sell out. One can imagine how this might generate conflict between siblings on a number of fronts: whether or not to sell; or over the use of space by one or other family members who are not actively living in their using their part of the dwelling. (For example one option would be for an absentee beneficiary to rent out the room or rooms, and while this would not be unusual in Bogotá where there is a lot of petty-landlord renting, it would be an unusual and probably unwelcome strategy in Mexico, where most sharers are kin, and close kin at that.) New patterns of informality and unregulated sales will be the outcome in many cases.

Policies to foment and broaden formal succession arrangements

We have seen how only a small proportion of the population in Mexico and in Latin America make a will. Those who generally have a will are usually the better-off in society, but our research demonstrates that today substantial sections of the poor hold significant assets in the form of their homesteads, and that their long term goal always included bequeathing the family home to their surviving children and grandkids: hence the need for testamentary and other succession procedures. Unfortunately, even the federal government's well-intended testamentary programs often falls on deaf ears because many Mexicans do not understand the benefits of will-making, or of granting legal standing and certainty to inheritance arrangements.

Moreover, the varied arrangements and provisions for intestate succession are often not fully or widely understood. Common perceptions are that the spouse inherits everything, or at least 50%. Few people realize that the children share the property equally, sometimes with the surviving spouse also taking a single equal share, sometimes not, and so on. To date, however, this lack of understanding among the poor about intestate succession has been largely moot, since a lot of succession is handled under informal agreement between parents and children. Court challenges over intestate property inheritance is largely in the realm of the better-off, but given the household complexities that we have described in this paper, and the multiple conflicts that can arise as households seek to the transfer the family patrimony to the children, it is increasingly an issue for the poor and for the courts. It may be that they, too, will have to make greater recourse to the courts, but their inability to pay the considerable costs involved, and the long drawn out nature of proceedings are likely to make informal resolution a more effective way to go.

Policies to develop testamentary programs at reduced costs

As noted above, the federal government's testamentary promotion program is in full swing and has had some success at least in so far as sizeable front-end cost discounts have encouraged many Mexicans to go to their local notary offices to acquire a will during the month of September. However, although more people are acquiring wills in the month of September (and October), the overall number of wills in any one year does not appear to have increased significantly (at least not between 2003 and 2006).

If testamentary procedures are to be promoted successfully in the future then much needs to be done to reduce the downstream costs tied to the probate of Wills. When they make a Will few people realize the costs associated with proving the Will and disposing of the inheritance – through taxes, duties, and notary costs of between 7 and 12% of the total assets. If Wills are to be encouraged and to become a mainstream feature within Mexican culture, then these high costs will need to be reduced, at least for lower-income groups. Also where some beneficiaries continue to live in the dwelling to which they have a part share, it will be necessary to find ways to defer or waive probate costs and taxes in

those cases. Otherwise forced displacement of the household(s) will arise in order to liquidate the inheritance assets and pay the tax and legal bills: a somewhat perverse outcome.

Only once the property is actually sold is it feasible for the full set of taxes and notary costs to kick in. And even here some sort of sliding scale of low or minimum tax and transfer costs on properties below a certain level (say \$100,000 or less following our estimates in Table 1) would almost certainly be important. Otherwise people will likely feel badly deceived once it becomes apparent that the low cost program that encouraged them to take out a will in the first place has ultimately led them into massive and sometimes unaffordable probate costs. In these circumstances they will find informal routes to dispose of their properties, and this is likely to be messier than ever, further exacerbating the impediments to “normal” market transactions. Thus, if Mexican officials truly want to foment a testamentary culture among lower-income groups that will facilitate titling and smooth operations in the market place, then they will need to look carefully and creatively at proposing solutions that will truly act as an incentive.

Policies to promote living inheritance or donations: donación en vida

We have observed how the majority of families make informal and usually implicit arrangements about how they wish to divide up the family home, and that this invariably takes place alongside long term (often permanent) parental sharing of the dwelling space with some of their children. However, it can also be achieved explicitly through making a donation of the property in advance of one's death – *donación en vida* – as it is known in Mexico. This has several advantages: first if families want to avoid long and costly succession trials or cases, then a donation is a better alternative than bequeathing their assets through a will. In addition, by tying this to a life interest in the property (“*usufructo vitalicio*”) it can be officially donated while the owner remains resident until s/he dies. Another benefit is that if the original owner wishes to withdraw or take back the donation, it is possible do so, but only after proving that this due to legitimate cause.

Such donations are exempted from federal tax for descendants who are direct blood relatives. However, if formal *inter vivos* transfers are to become more salient in the future two matters need to be addressed. First, it is important to promote the sense of reassurance that one can retain a life interest in the property. Second, if, as in Mexico, formal *inter vivos* transfers require payment of the ISAI (*Impuesto Sobre la Adquisición de Inmuebles*) – the standard local property transfer tax – then it will be important to provide waivers or major cost reductions on low income properties – similar to those which are often applied to low income probate cases (outlined earlier). Otherwise *inter vivos* transfers are likely to remain informal arrangements which will make them both relatively rare and open to downstream conflicts.

Designated beneficiary program (“Legado Preferente”)

This is a relatively recent program in which a low income household identifies a beneficiary who will inherit the house in the event of one's death – rather similar to the practice when taking out a new insurance policy. This program only applies to new low cost housing developments in each state, and is a purely administrative process, not a juridical one. But in so far as it applies only to new property sales and contracts, it is difficult to imagine how it might be extended to existing properties, especially where these are fully paid for.

Justicia Alternativa: alternative dispute resolution mechanisms

The notions of alternative dispute resolution and mediation are not very well known in Mexico although it is something that has long

been on the international agenda. For instance, in 2001 the United States Agency for International Development (USAID) sponsored a project to promote the idea of mediation and alternative conflict resolution in Mexico. USAID, along with *Mediación en México*, the Latin American Legal Initiatives Council (LALIC) of the American Bar Association (ABA), and the ABA Section of Dispute Resolution and Freedom House sought to promote the idea of alternative justice, as well as reducing the costs of litigation. Their main objective, however, was to make justice more affordable in Mexico, and as a result, more widespread and accessible for all. The Mexico Mediation Project also provides technical and administrative support to states and institutions in order to help them implement their own mediation and alternative dispute resolution mechanisms.

In addition, some states have recently passed a series of laws regarding alternative justice, mediation and dispute resolution (*Ley de Justicia Alternativa, Gaceta Oficial del Distrito Federal*, 8 de enero de 2008). The Federal District's Tribunal created an alternative justice center (*Centro de Justicia Alternativa del Tribunal Superior de Justicia del Distrito Federal*) to provide mediation services, conflict resolution alternatives, and legal counsel for those who need assistance. More importantly, however, is that judges are required by law to inform the litigants of these alternative mechanisms. These alternative justice centers, although fairly new to Mexican legal law institutions, nevertheless they are important in the context of succession issues and may offer a good alternative for those who cannot afford to initiate or conclude a succession case, or to deal with controversies that exist between the different parties involved.

To the extent that many of the informal arrangements described in this paper lead to subsequent challenges such as the conflictive cases discussed earlier in which a claimant sought to dispossess half-sisters, aunts and uncles, and another in which a wife feared eviction from her errant husband, then these are far more readily dealt with locally through formal or informal dispute resolution channels. They may be provided by local NGOs, or by legal clinics tied to higher education institutions offering pro bono or means-tested services. Some clinics already exist – at the National University (UNAM) for example – but the depth and breadth of services that they can provide are very limited. More needs to be done to support and extend these services. In addition given the local variations that exist in federal systems, much could be done to improve information dissemination about titling and inheritance matters for low income property holders. A good example is the triptych pamphlet produced by one of the study teams in the case of Guadalajara document (online at www.lahn.utexas.org).

Final thoughts: applications elsewhere

Effective and expeditious titling and inheritance programs are an important policy issue, not only to provide security for the beneficiaries but also for the maintenance of the housing stock itself. This is especially true when the dwelling unit continues to have a use value for one or more of the designated beneficiaries and cannot be sold. If those that live there do not have a share in secure title then there will be little incentive to invest in home improvements and housing rehab in what are often already quite deteriorated dwelling environments. It will also be important to develop policies to facilitate buy-outs of those siblings and beneficiaries who have little need or interest in living in the family home, but who wish to receive some benefit from their share of the inheritance. If not, they will become frustrated from being unable to release the exchange value of the parental home, and may be otherwise be tempted to engage in rent seeking behaviors by renting out or loaning one or two rooms (their part share). Such rent seeking is almost certain to inhibit the capacity of the resident household(s) to make broader dwelling improvements and rehab.

Indeed, it may actively increase further deterioration since absentee sibling shareholders are unlikely to invest in the home. It is also likely to intensify conflict and resentment between over the ongoing uses of space within the family home.

This paper has probably only begun to scratch the surface of what we fully expect will become an important arena of future household and property relations among lower-income families. We hope that the materials presented here will encourage other housing researchers and policy makers to gather data in order to better understand second and third generation housing arrangements and expectations regarding the future of their parents' self-built patrimony. Owning and disbursing property will bring an ever increasing proportion of low income sectors of society into the inheritance process – usually as beneficiaries or as claimants: but we need to know much more about how people are planning for (or ignoring) their demise, and property transfers. How do governments regulate and provide for succession, and how widely known and understood are the prevailing laws and codes by low income householders? Where intestacy reigns, what is likely to happen, and how far will informal agreements be taken into account, or even be implemented once the loved one is departed?

In societies where testamentary freedom is allowed (either freely or in part) it will be important to create a deeper and broader understanding of testamentary culture. But it will also be important to frame that discussion in terms that make sense and are practicable within informal housing processes. It will also be important for researchers and policy makers to carefully examine existing codes and legal procedures that operate locally. This will require sensitivity in developing legal procedures to promote participation, as well as greater trust in the legal system, in order to ensure that future participation does not become a poison chalice at the moment of probate and settlement, saddling beneficiaries with prohibitively high transaction and settlement costs when all they are trying to do is to secure the future use (value) of their inheritance. It will also require creativity in devising low-cost mechanisms of dealing with conflict and intestacy. Unless these steps are undertaken, a patrimony for the children could become a millstone around their necks, as well around that of the government.

References

- Abramo, P. (Ed.). (2003a). *A Cidade da Informalidade: O Desafio das Cidades Latino-Americanas*. Rio de Janeiro: Sette Letras.
- Abramo, P. (2003b). O mercado solo informal em favelas e a mobilidade residencial dos pobres nas grandes cidades brasileiras: uma visão aproximativa. Unpublished paper IPPUR/UFRJ.
- Adame Goddard, J. (2004). *El matrimonio civil en México: 1857–2000*. Mexico City: Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas.
- Angel, J. (2007). *Inheritance in contemporary America: The social dimensions of giving across generations*. Johns Hopkins University Press.
- Bromley, R. (2004). Power, property and poverty: why de Soto's 'Mystery of Capital' cannot be solved. In A. Roy, & N. AlSayyad (Eds.), *Urban informality: Transnational perspectives from the middle East, Latin America and south Asia* (pp. 271–288). Lexington/Center for Middle Eastern Studies, UC Berkeley.
- Burgess, R. (1982). Self-help housing advocacy: a curious form of radicalism. A critique of the work of John F.C. Turner. In P. Ward (Ed.), *Self-help housing: A critique* (pp. 55–97). London: Mansell.
- Campbell, T. (2003). *The quiet revolution: Decentralization and the rise of political participation in latin American cities*. Pittsburgh, P.A.: Pittsburgh University Press.
- Colegio de Notarios del Distrito Federal. (2006). *Testimonios: El notariado del Distrito federal, 2006*. <http://www.colegiodenotarios.org.mx>.
- Deere, C. D. (2007). Married women's property rights in Mexico: a comparative Latin American perspective and research agenda. In H. Baitenmann, V. Chenault, & A. Varley (Eds.), *Decoding gender: Law and practice in contemporary Mexico* (pp. 213–230). Rutgers University Press.
- Encyclopedia of housing. (2011). In S. Smith (Editor in Chief). Entry by P. Ward "Housing and urban regeneration in the first suburbs and innerburbs of the Americas".
- Escallón Gartner, C. (Ed.). (2010). *Arrendamineto y vivienda popular en Colombia como alternativa habitacional*. Bogotá: Universidad de los Andes.

- Farvacque, C., & McAuslan, P. (1992). *Reforming urban land policies and institutions in developing countries*. Urban management program. Washington DC: The World Bank.
- Fernandes, E., & Varley, A. (1998). *Illegal cities: Law and urban change in developing countries*. London: Zed Books.
- Gaceta Oficial del Distrito Federal. (January 8, 2008). <http://www.ordenjuridico.gob.mx> p. 248.
- Gilbert, A. (1993). In collaboration with Camacho, O., Coulomb, R., & Necochea, A. (Eds.), *Search of a home: Rental and shared housing in Latin America*. London: UCL Press.
- Gilbert, A. (1996). *The Mega-city in Latin America*. New York: United Nations University Press.
- Gilbert, A. (1999). A home is forever? Residential mobility and homeownership in self help settlements. *Environment and Planning*, 31, 1073–1091.
- Gilbert, A. (2002). On the mystery of capital and the myths of Hernando de Soto: what difference does title make? *International Development Planning Review*, 24 (1), 1–20.
- Gilbert, A. (2010). Propiedad de vivienda, alquiler y microfinanciamiento: implicaciones de la crisis subprime para las personas de escasos recursos en las ciudades pobres. In C. Escallón Gartner (Ed.), *Arrendamineto y vivienda popular en Colombia como alternativa habitacional* (pp. 21–51). Bogotá: Universidad de los Andes.
- Gilbert, A., & Ward, P. (1985). *Housing, the state and the poor: Policy and practice in three Latin American cities*. Cambridge University Press.
- González de la Rocha, M. (1994). *The resources of poverty. Women and survival in a Mexican city*. Oxford: Blackwell.
- Grajeda, E. (2008). *Inheritance in Mexico: Current testamentary and property regularization policies*. M.A. thesis, University of Texas at Austin.
- Jiménez, H. E. R. & Cruz, S. H. El regreso a la irregularidad de las colonias populares. La necesidad de diseñar nuevas políticas de regularización, In C. Salazar (Coord.) (Ed.), *Regularización de la tierra, planeación urbana y desarrollo sustentable*, Colegio de México, submitted for publication.
- Lomnitz, L. (1976). *Como sobreviven los marginados?* México: Siglo XXI.
- Katz, B., & Lang, R. (2005). *Redefining urban and suburban America*. Brookings Institution.
- Moser, C. (2009). *Ordinary families, extraordinary lives: Assets and poverty reduction in Guayaquil, 1978–2004*. Washington, DC: Brookings Institution.
- Puentes, R., & Warren, D. (2006). *One fifth of America: A comprehensive guide to America's first suburbs*. Washington: Brookings Institution.
- de Soto, H. (2000). *The mystery of capital: Why capitalism triumphs in the west and fails everywhere else*. New York: Basic Books.
- United Nations-Habitat. (2003). *The challenge of slums: Global report on human settlements*. London: Earthscan.
- United Nations-Habitat. (2006). *The state of the world's cities 2006/2007*. Nairobi.
- Varley, A. (1987). The relationship between tenure legalization and housing improvements: evidence from Mexico City. *Development and Change*, 18(3), 463–481.
- Varley, A. (1994). Housing the household, holding the house. In G. N. Jones, & P. Ward (Eds.), *Methodology for land and housing market analysis* (pp. 120–134). MA: Lincoln Institute of Land Policy.
- Varley, A. (2002). Private or public? Debating the meaning of tenure legalization. *International Journal of Urban and Regional Research*, 26(3), 449–461.
- Varley, A. (2010). Modest expectations: gender and property rights in urban Mexico. *Law and Society Review*, 44(1), 67–100.
- Varley, A., & Blasco, M. (2000). Intact or in tatters? Family care of older women and men in urban Mexico. *Gender and Development*, 8(2), 47–55.
- Ward, P. M. (1982). *Self-help housing: A critique*. London: Mansell.
- Ward, P. M. (1998). *Mexico city* (2nd revised ed.). John Wiley and Sons.
- Ward, P. M. (2002). Regularization in Latin America: lessons in the social construction of public policy. In G. Jones (Ed.), *Urban land markets in transition*. Cambridge: Lincoln Institute of Land Policy. (CD-ROM).
- Ward, P. M. (2005). The lack of 'Cursive Thinking' with social theory and public policy: four decades of marginality and rationality in the so-called 'Slum'. In B. Roberts, & C. Wood (Eds.), *Rethinking development in Latin America* (pp. 271–296). Pennsylvania State University Press.
- Ward, P. M. (2008). Hacia una segunda etapa de la regularización de los títulos de propiedad en México. In A. Iracheta, & S. Medina (Eds.), *Irregularidad y suelo urbano. Memoria del II Congreso Nacional de Suelo Urbano* (pp. 123–139). Toluca: El Colegio Mexiquense.
- Ward, P. M. A patrimony for the children: low income homeownership and housing immobility in Latin American cities. *Annals of the Association of American Geographers*, in press.
- Ward, P., Guisti, C., & de Souza, F. (2004). Colonia land and housing market performance and the impact of lot title regularization in Texas. *Urban Studies*, 41 (13), 2621–2646.
- Ward, P., Larson, J., de Souza, F., & Giusti, C. (2011). Con el título en la mano: the meaning of full property titles, and the impact of titling programs upon low income housing improvements in Texas Colonias. *Law and Social Inquiry*, 36(1), 1–82.
- Ward, P. M., & Grajeda, E. (under review). Inheritance and succession among second and third generation squatter households in latin America: a Mexican case study.
- Wilson, R., Ward, P., Spink, P., & Rodríguez, V. (2008). *Governance in the Americas: Decentralization, democracy, and subnational government in Brazil, Mexico, and the USA*. University of Notre Dame Press.