



# **Utah Bar Foundation Report on Debt Collection and Utah's Courts**

**Released April 2022**



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# Message from the Executive Director

In 2019, the Utah Bar Foundation (UBF), in conjunction with the Utah Foundation, commissioned an unmet legal needs study that was completed in February 2020. The final report from that study, titled *The Justice Gap: Addressing the Unmet Legal Needs of Lower-Income Utahns*,<sup>1</sup> was released in April 2020. That report showed that some of the highest unmet legal needs in Utah center around debt collection, in both District and Justice Courts, as well as the eviction process, handled in District Court. Most concerning was that the majority of plaintiffs have attorney representation in the eviction and debt collection matters, while less than 5% of defendants (renters and/or debtors) had attorney representation. The Utah Bar Foundation wanted to take a deeper look into ways to improve this legal system for all parties involved.



**Kim Paulding, Director  
Utah Bar Foundation**

In support of its mission to increase knowledge and awareness of the law in the community, improve the administration of justice, and serve law-related public purposes, the Utah Bar Foundation (UBF) has undertaken a months-long effort to explore issues arising from the prevalence of debt collection litigation in Utah and to identify opportunities for systemic improvement. Nationwide, state courts are increasingly burdened with high-volume, low-dollar debt claims brought by plaintiffs with legal representation and defendants with no legal help. For various reasons, defendant participation rates in the legal system can be low, leading to a high rate of default judgments. Utah's courts are not immune to these problems. The Utah Bar Foundation has taken a data-driven, non-partisan approach to studying these issues. Support for this project was provided by The Pew Charitable Trusts.

We appreciate the assistance from the Utah State Courts in fulfilling our court data requests, the many hours of time freely given by numerous community stakeholders with expertise in the eviction and debt collection legal system in Utah, members of The Pew Charitable Trusts Civil Legal System Modernization (CLSM) team and to the members of the Utah Bar Foundation Working Committee for making this project a success.

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# Overview

This project sought to understand debt collection activities and the processes and outcomes tied to two levels of the judiciary in Utah: Justice Courts, which hear small claims debt cases, and District Courts, which hear cases involving third-party debt collection, evictions, and eviction-related debt. The project researchers found the following:

- ◆ Some policies, including statutes and court rules, serve to disincentivize defendant participation in debt lawsuits. In some cases, policies around attorney fees and court-awarded damages lead to worse outcomes for defendants who do engage with the courts than for defendants who do not participate in their cases and receive a default judgment.
- ◆ Civil courts are primarily being used by financial institutions and their subsidiaries to collect debts. As a result, individuals and/or small business owners represent a minority of plaintiffs even in Justice Court small claims.
- ◆ In Utah, six plaintiffs account for roughly 50% of all debt collection cases in District Court and nine plaintiffs account for roughly 50% of small claims filed in Justice Court.
- ◆ The size of debt being pursued in District Court is very similar to that pursued in Justice Court (median amounts in controversy are approximately \$1,200), but outcomes for defendants are very different due to contrasting policies.
- ◆ While the rules for small claims<sup>2</sup> in Justice Courts are easier to navigate for debtors, the rules for District Court were written assuming both parties involved in a case would have legal representation.<sup>3</sup> Defendant confusion around their rights and obligations can discourage participation with a case.
- ◆ When it comes to evictions, Utah's policies are among the least renter-friendly in the nation; only two other states have a three-day "pay or vacate" window coupled with treble damages, which may be assessed in addition to any back rent owed, for residential evictions.<sup>4</sup>

Additionally, we identified several overarching themes related to the debt litigation process in the state:

- 1 Court is expensive (for all parties).**
- 2 Court processes are difficult to navigate without specialized training.**
- 3 Court is a less efficient vehicle for resolving debt claims than upstream solutions.**
- 4 People seldom understand their rights and obligations.**
- 5 The length of time between case initiation to judgment is a significant factor in defendant outcomes.**

Utah's courts have a unique opportunity to improve adjudication of debt collection and eviction lawsuits. This report proposes policy solutions to modernize, streamline, and improve the eviction and debt collection system for all parties.

# Introduction

Beginning in July 2021, the UBF began gathering data from the Utah Administrative Office of the Courts on eviction and debt collection lawsuits. The scope also included dozens of stakeholder interviews on their experiences with small claims, District Court debt claims, and evictions in the legal system. This report describes the scope of these lawsuits as they move through Utah's District and Justice Courts as well as their impact on courts, the parties involved, and Utahns generally. It concludes with recommendations for reform at various stages of the debt collection litigation process from the initial notice and filing of a lawsuit through the post-judgment enforcement of a claim. These recommendations aim to promote a more open, fair, and efficient justice system.

## Debt Collection

As of 2013, debt collection lawsuits – which include unpaid auto loans as well as medical and credit card bills – have become the single most common type of civil litigation, according to The Pew Charitable Trusts (Pew). In its 2020 report on individual debt, Pew also found that the number of debt cases nationwide rose from fewer than 1.7 million to about 4 million between 1993 and 2013. That leap corresponds with Consumer Financial Protection Bureau (CFPB) national survey data that found nearly 1 in 20 adults with a credit report were sued by a creditor or debt collector in 2014.

While courts are an important resource for businesses needing to collect debts owed by their customers or renters, civil dockets in state courts, including Utah's, are dominated by corporate plaintiffs. Companies attempting to collect consumer debt are often able to use serial filing<sup>5</sup> to integrate the civil court process into their collections processes. Nationwide, these companies file millions of lawsuits<sup>6</sup> each year, and commonly receive default judgments, meaning they are granted court authority to garnish a defendant's wages and assets without the defendant ever engaging with the lawsuit or court process.<sup>7</sup> A majority of these filings are attributable to debt buyers who purchase debt from original creditors such as banks or hospitals for a fraction of their worth<sup>8</sup> but sue consumers for the full amount plus collection costs.<sup>9</sup>

Much of the debt being collected by these plaintiffs can be classified as household debt, meaning it was incurred primarily as a result of expenses such as paying for rent and utilities, medical bills, or credit card usage. Nationally, household debt has exceeded \$15 trillion<sup>10</sup> and the COVID-19 pandemic initially exacerbated the growing housing and financial instability of the past decade.<sup>11</sup> Utah has not been immune to these trends. While the state has experienced rapid economic growth with a 37% increase in GDP from 2010 to 2020 – one of the fastest in the nation<sup>12</sup> – Utah still has one of the highest debt-to-income ratios in the country.<sup>13</sup> As of December 2020:

- ◆ 21% of Utah's population had some form of debt in collections, with a median amount of \$1,992.
- ◆ 41% of consumers in communities of color have some form of debt in collections.
- ◆ Medical debt represents the highest share of past due bills, at 14% – above student loan, auto/retail, and credit card debt.<sup>14</sup>

## Eviction

In recent years, evictions have garnered significant attention from policymakers nationwide, leading several states to adopt policy and process reforms to serve the needs of all court users.<sup>15</sup> In addition to substantive changes to landlord-and-tenant law, states are updating court processes around notice, service of process, and court forms.<sup>16</sup> The COVID-19 pandemic and exacerbated threat of housing instability in particular has focused policymaker and public attention toward judgments on eviction.<sup>17</sup> This focus has led to both local<sup>18</sup> and national<sup>19</sup> innovation and expansion of resources, many of which could be adapted in Utah, especially given the recent adoption of the judiciary's regulatory sandbox.<sup>20</sup>

In 2016, Utah's eviction rate, or the percentage of renters who are removed from occupancy through the court process, was 0.93% – significantly lower than its adjacent and southern neighbors, and only slightly higher than Idaho and Wyoming to the north.<sup>21</sup> From the years 2013-2020, more than 56,000 eviction cases were filed with the Utah Courts.<sup>22</sup>

Utah is one of three states in the nation that combine a three-day notice period with the availability of treble damages for landlords in residential eviction cases; of these three states, Utah is the only state where the award of treble damages is mandatory and not in the discretion of the court.<sup>23</sup> The combination of these eviction policies can leave Utah renters scrambling for new housing while burdened with crushing housing-related debt judgments and garnishments, which can hinder efforts to secure a new place to live.

## Treble Damages

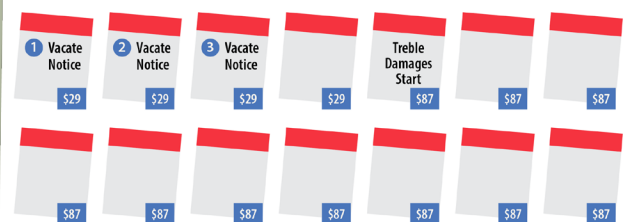
In Utah, nonpayment of rent can lead a landlord to demand that a renter either “pay or vacate” the premises within three business days. If the renter doesn’t comply, the landlord will initiate an action for “unlawful detainer” (eviction).<sup>24</sup> Evictions are structured as rent collection proceedings, but with different notice requirements and other policies from debt collection cases. Utah is unique in its explicit statutory allowance for plaintiffs (landlords) to seek mandatory treble damages, which are additional damages for each day the defendant occupies a property after the three-day notice to pay or vacate has expired.<sup>25</sup> The wording of the statute requires these damages to be awarded by the court, without discretion, to plaintiffs who request them as part of an eviction. We believe that policy change around these two statutes could continue to achieve the landlord’s goal of removing a renter who is not paying rent but could also be improved so that the renter is not left with crushing debt and the inability to find new housing as a result of their eviction.

The following diagram illustrates how quickly this debt can add up for a renter who is already behind on rent.

### How TREBLE DAMAGES are Calculated

Monthly rent: \$875

*Case Study – The Jones family received an eviction notice on Monday, here are how treble damages is calculated if they move out within two weeks.*



#### Totals:

Past Due Rent (2 months and 4 days)	\$1,866
Attorney's fees and collection costs	\$300
Treble Damages (10 days)	\$870
<b>TOTALS</b>	<b>\$3,036</b>

Policy change could also help address rental debt and racial disparities around evictions in the state. Approximately 23.9% of Utah's population are people of color,<sup>26</sup> but the Utah Division of Multicultural Affairs found that over 80% of evictions in Utah take place in zip codes where the majority of residents are people of color.<sup>27</sup>

When an eviction is filed against the renter, it can significantly impair their ability to secure quality, affordable rental housing<sup>28</sup> and employment down the line.<sup>29</sup> Understanding what happens when debts come to court and how the policies and processes governing these lawsuits – which were intended for a very different structure of court usage and civil legal need – can make case outcomes more fair and help prevent further economic instability of low-income Utahns.<sup>30</sup>

## Methodology

To understand how the national trends surrounding debt and the civil legal system manifest in Utah, we conducted a research study of quantitative data informed by stakeholder context. In addition to docket data provided by the Utah's Administrative Office of the Courts (cases filed from January 1, 2013, through September 30, 2021), hand samples of court documents, and data from the Utah Department of Financial Institutions' annual reports, researchers analyzed data collected via stakeholder interviews with judges, court staff, both plaintiff and defense attorneys, and community-based organizations as well as over 30 hours of virtual courtroom observations of District Court debt collection cases. We also conducted an inventory of the patchwork of statutes, court rules, and forms that govern debt collection, eviction, and small claims litigation in Utah. Judges and practicing attorneys were consulted throughout to contextualize our understanding of all this data. Additionally, some information about court procedures has been included in order to meaningfully situate research findings into the greater context of Utah's civil justice system.<sup>31</sup> Detailed methodology, data analysis protocols, and court resources are included in the conclusion.

While the initial focus of this report was on debt collection claims in District Court and small claims in Justice Court, we chose to expand our analysis to include eviction cases, as most evictions are brought due to non-payment of rent, rather than for other reasons that might warrant a lease termination, and landlords seeking to collect rent-related debt can pursue these amounts as debt claims after the issue of occupancy has been determined. We include data on small claims cases, as they are part of a bigger picture of how debt collection lawsuits go through the court system, although Utah does not permit third-party debt buyers or collectors to file in small claims court.

The scope of this report is limited to the overlap between two trends: the changing civil courts and rising household debt. We do not discuss collection practices or landlord-renter interactions that take place before the court is involved, nor do we address questions surrounding why these debts allegedly incur and become delinquent.

The survey of unmet legal needs conducted immediately prior to the pandemic by the Utah Bar Foundation identifies this nexus of personal finances and the courts as the primary underserved civil legal issue being faced by low-income Utahns. The survey found that 26% of low-income Utah households were facing financial legal needs and more than two-thirds said they could not afford a lawyer if they needed one.<sup>32</sup> While Utah has a wide range of civil legal aid services that are accessible for both urban and rural Utahns, the vast majority of these resources focus on family law, immigration, or domestic violence issues, often leaving debt collection and eviction defendants to navigate lawsuits on their own.<sup>33</sup>

# Research Findings

## Summary

Debt collection lawsuits are governed by the state's general rules of civil procedure. Utah also has specific debt collection court forms and the Ten Day Summons – an alternative to the traditional summons that allows plaintiffs in District Court to serve notice of a lawsuit 10 days prior to filing anything with the court, which can have a significant impact on the lawsuit process. The state judiciary has also adopted some court practice-related reforms, such as designating debt collection lawsuits as a unique case type in case management systems. Utah is one of just a few states that has done this.<sup>34</sup> Data from Utah's Administrative Office of the Courts provided valuable information about the landscape of debt litigation across the state. Deeper analysis of this data illuminates specific problems that arise when debt collection practice interacts with Utah's civil legal system.

## Debt Litigation in Utah

### Debt and Evictions Are a Statewide Issue

From January 1, 2013, through September 30, 2021, a grand total of 755,410 District Court debt claims, Justice Court small claims, and evictions were filed in Utah's courts. Of these:

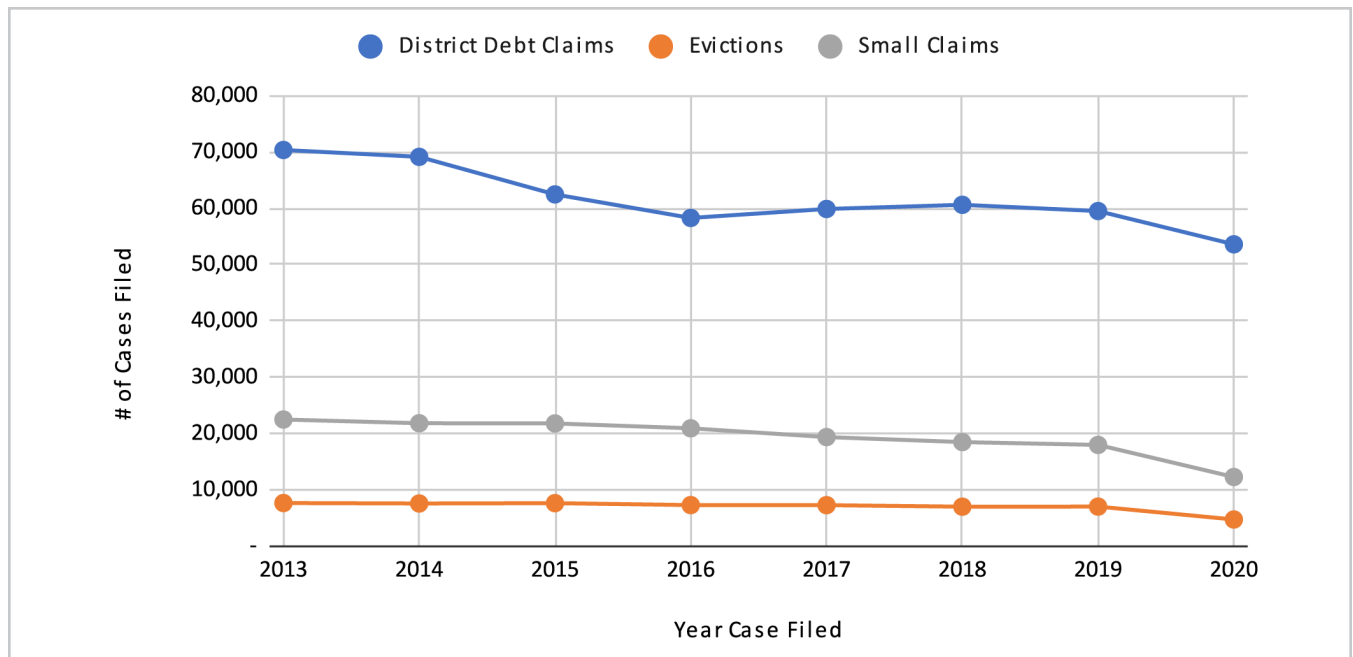
- ◆ 59,668 were eviction cases, representing 9% of general civil legal claims filed in District Court
- ◆ 163,028 were small claims,<sup>35</sup> and
- ◆ 532,714 were District Court debt claims, representing 85% of general civil legal claims filed in District Court.<sup>36</sup>

Some variation in case filings occurred over this span of time. From 2013 to 2019, the numbers of eviction filings and small claims filings were relatively flat, with decreases beginning in early 2019. Debt claims showed a decline from about 70,000 in early 2013 to about 60,000 by 2016; debt claims filings remained relatively level for the next three years with a slight decline between 2019 and 2020, possibly due to a drop in case filings associated with the COVID-19 pandemic.



**Fig. 1: Number of Case Filings by Year and Type**

Filings by case type have remained relatively constant



Case filings from 2019 reveal that debt litigation impacts all areas of the state, with some areas experiencing higher per capita rates of filings than others. Of Utah's rural counties,<sup>37</sup> the counties of Box Elder, Cache, Carbon, Duchesne, Morgan, Rich, and Tooele present a relatively higher rate of case filings for at least one of each of the case types analyzed in this report (debt claim, small claim, or eviction). The highest per capita rate of debt case filings took place in Tooele County. Carbon County experienced the second-highest per capita rate of debt claims as well as the highest rate of evictions. Non-rural Salt Lake County experienced the second highest rate of small claims filings and eviction filings, and the fourth-highest rate of debt claims. The Weber-Morgan area had the highest small-claims filing rate and the third-highest debt claims filing rate. These numbers indicate that any resources that could improve the court experience for debt litigants must be accessible in all areas of the state to support equitable outcomes between Utah's rural and non-rural communities.

**Table 1: Debt Collection Impacts Rural and Non-Rural Utah**

**Carbon, Tooele, and Salt Lake County experience relatively higher rates of case filings**

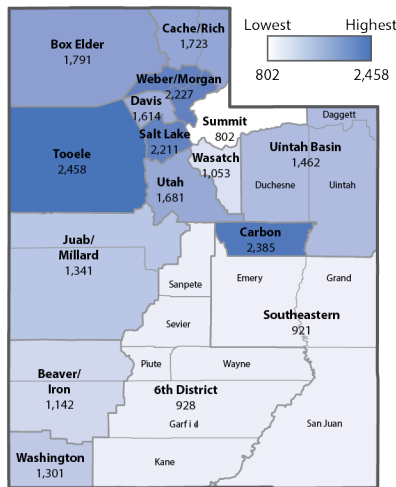
County	Cases Filed per 100k population (2019)		
	Debt	Evictions	Small Claims
6th District	929	66	148
Beaver/Iron	1,142	119	154
Box Elder	1,791	143	501
Cache/Rich	1,723	60	353
Carbon	2,385	352	323
Davis	1,614	161	559
Juab/Millard	1,341	79	198
Salt Lake	2,211	337	709
Southeastern	921	91	157
Summit	802	78	235
Tooele	2,458	165	241
Uintah Basin	1,462	196	201
Utah	1,681	138	386
Wasatch	1,053	79	173
Washington	1,301	102	341
Weber /Morgan	2,227	310	1,170

**Fig. 2: Debt Is a Statewide Issue**

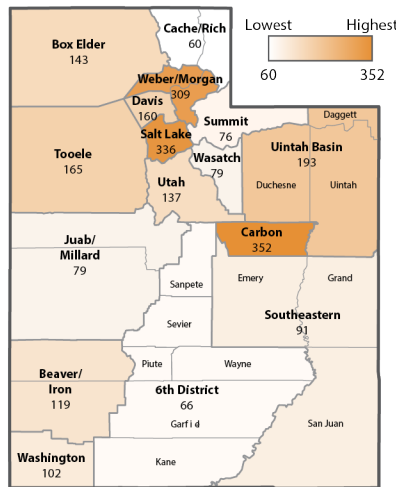
Rural areas saw slightly higher per capita filing rates in 2019, but all of Utah was affected

## Cases Filed per 100k People (2019)

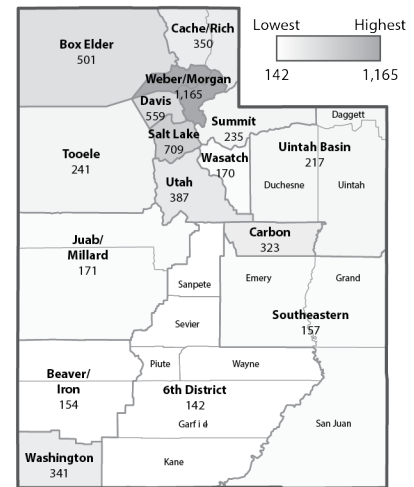
**District Debt Claims per 100k People**  
Cases Filed in 2019



**Eviction Cases per 100k People**  
Cases Filed in 2019



**Small Claim Cases per 100k People**  
Cases Filed in 2019

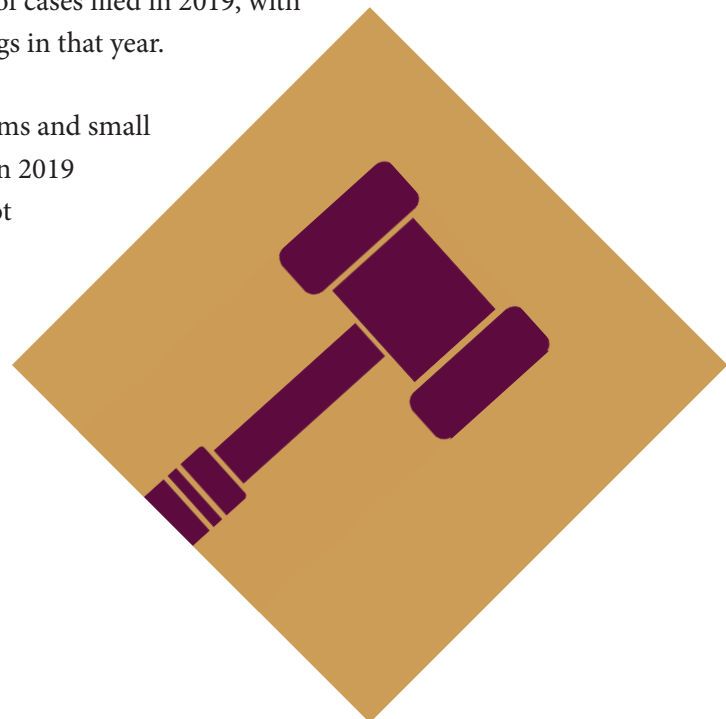


### Debt Litigation Is Brought by a Small Number of Plaintiffs

While debt litigation affects thousands of Utahns across the state, analysis of court data revealed that these claims are being brought by a small number of plaintiffs.<sup>38</sup> In 2019, six plaintiffs accounted for approximately 50% of all District debt claims, and nine plaintiffs accounted for approximately 50% of small claims.

In contrast, for eviction cases, 294 plaintiffs account for 50% of cases filed in 2019, with the top 10 filers accounting for just under 6% of eviction filings in that year.

The vast majority of plaintiffs in both District Court debt claims and small claims are companies.<sup>39</sup> A hand-sample of small claims filed in 2019 revealed that 83% of small claims were filed by companies, not people.<sup>40</sup> Seventy-two (72)% of small claims were filed by companies registered as financial institutions with the Utah Department of Financial Institutions (DFI), and 11% were filed by a company not registered with the DFI. Only 17% of small claims, or less than 1 in 5, were brought by individuals in 2019.

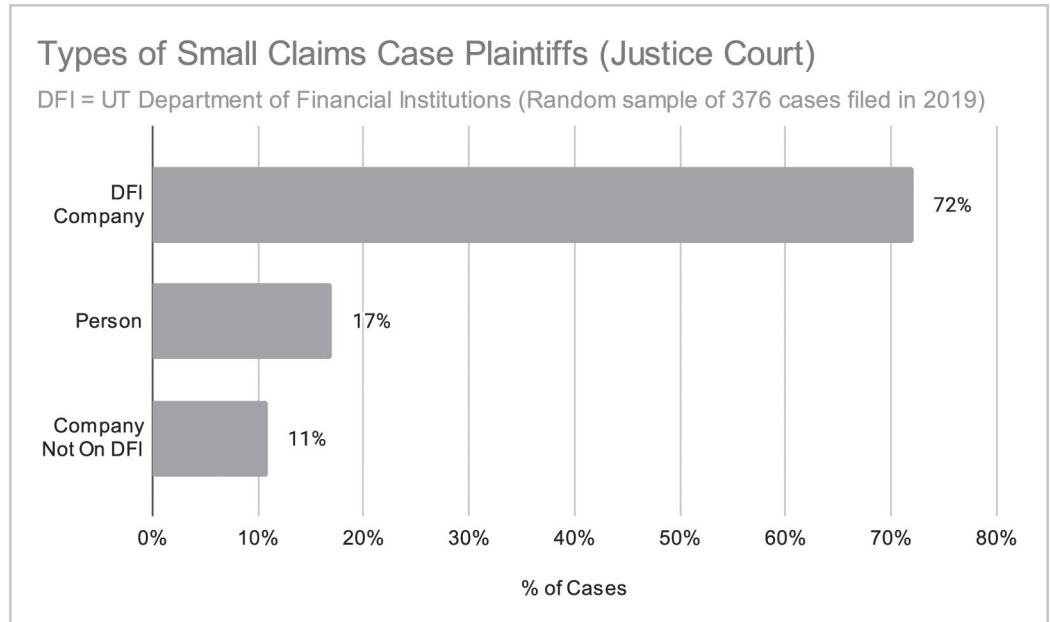


**Fig. 3: Companies Are Most Common Debt Plaintiffs**

**Only 17% of Utah small claims – less than 1 in 5 – were initiated by individuals in 2019**

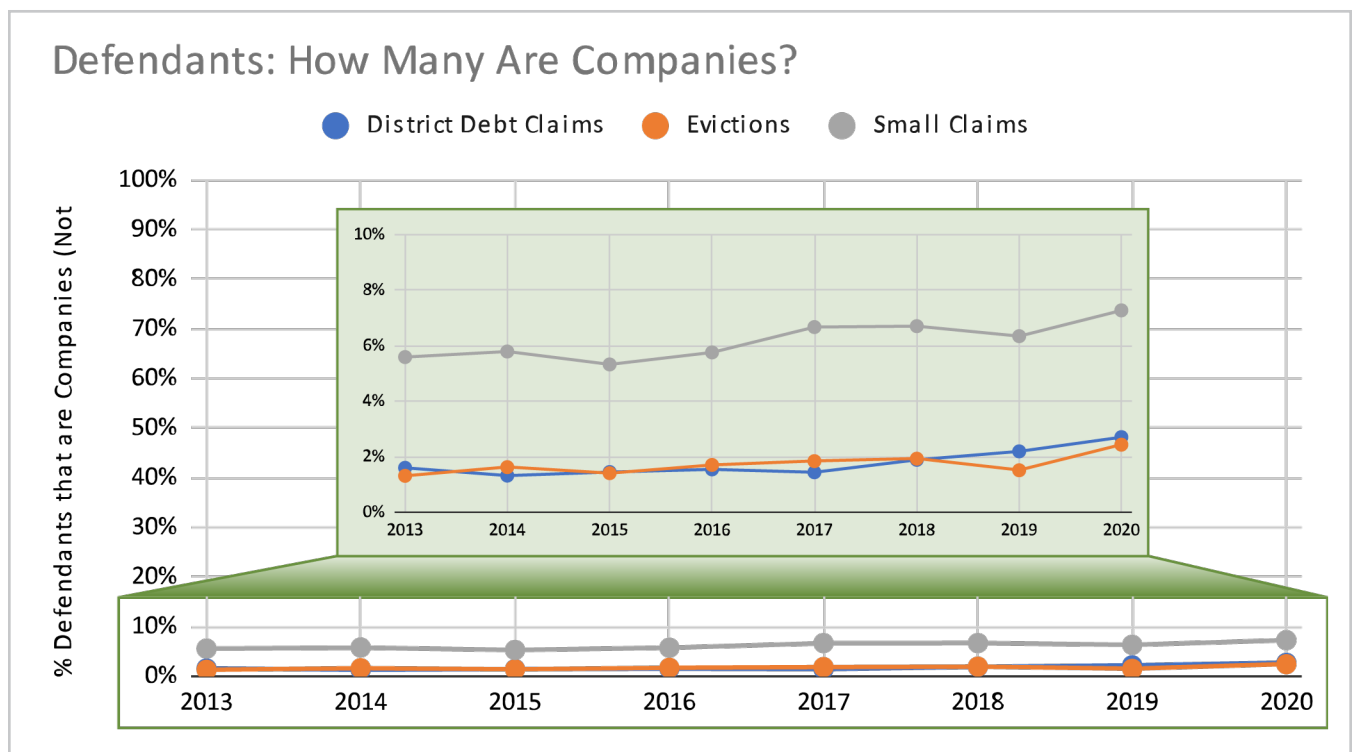
Nearly all debt claims examined in our study were brought by companies; in contrast, the vast majority of District Court debt claims defendants are individuals, not companies. From 2013 through 2020, the percentage of defendants who were companies in District Court debt claims ranged from 1%-3%;

the numbers of companies that were being evicted from a property were 1%-2%. For small claims, the percentage of defendants who were companies ranged from just over 5% to just over 7%.



**Fig. 4: Debt Defendants Are Almost Always Individuals**

**From 2013 to 2020, no more than 3% of defendants in District Court and fewer than 10% of defendants in Justice Court were companies**

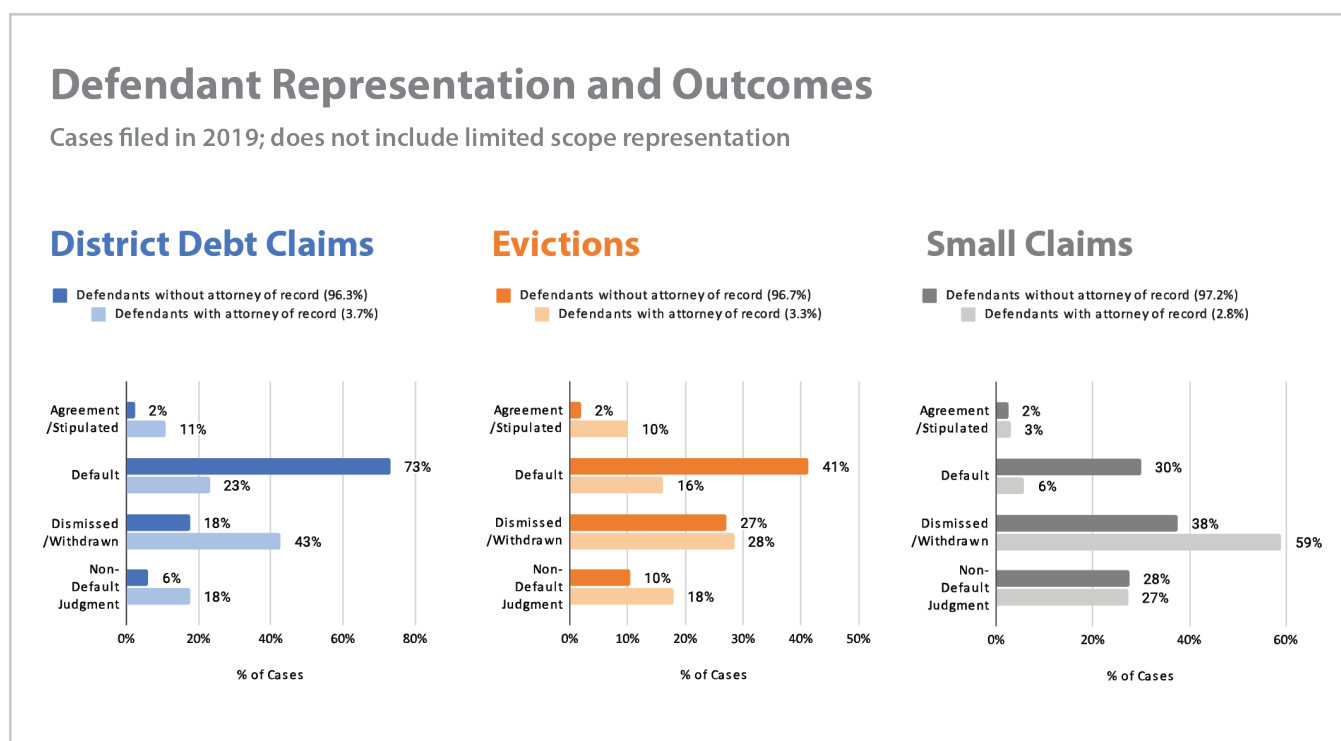


## Defendant Representation Is Rare, but It Can Have an Impact

In District Court debt claims filed in 2019, only 3.7% of defendants had some form of court-recorded attorney representation at some point during the case. A breakdown comparing case outcomes by representation for each case type (District Court debt claims, small claims, and evictions) suggests that attorney representation does have an impact on case outcomes for defendants. However, because representation is rare, these impacts are not felt by the vast majority of defendants. It should be noted that in some parts of the state, volunteer attorneys offer limited scope assistance, such as brief advice and counsel, but the nature of this assistance does not rise to full representation and therefore there is no attorney of record listed in these cases. Thus, any impact of this volunteer program to assist defendants in District Court debt collection cases would not be measurable using this court data.

**Fig. 5: Attorneys Improve Outcomes for Defendants**

Default judgment rates dropped for debt defendants with lawyers



For cases filed in 2019 where the defendant was represented by an attorney:

- ◆ The share of District Court debt claims with a default judgment was 23%, compared to 73% of District Court debt cases where the defendant did not have an attorney.
- ◆ For small claims, the share of cases resulting in a default judgment was only 6%, compared to 30% for defendants without representation.
- ◆ In eviction cases, 16% of cases resulted in a default judgment, compared to 41% of cases where the defendant did not have representation.

In both District Court debt claims and small claims, a larger share of cases where the defendant had representation resulted in the case being withdrawn or dismissed, compared to those cases where the defendant did not have representation. Representation did not appear to impact the rate of case withdrawal or dismissal in evictions.

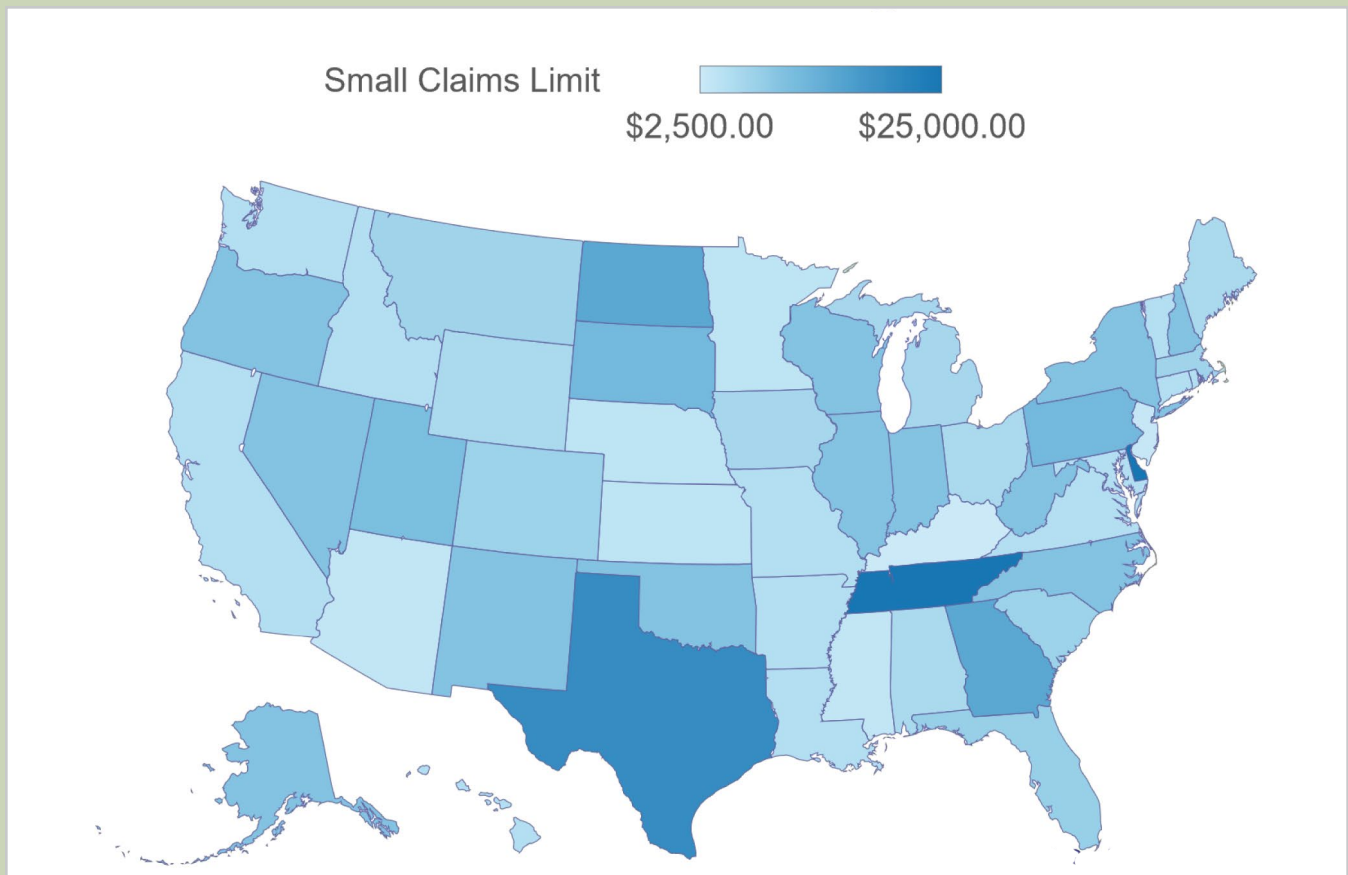
In evictions and District Court debt claims, the percent of cases that included an agreement or stipulation was higher where the defendant had representation. Defendant representation did not appear to have this impact in small claims.

## Small Claims

“Small claims” are legal actions to recover relatively small sums of money. “Small claims court” generally refers to a specific docket or calendar where a judge, or frequently a pro tem judge,<sup>41</sup> hears only these types of cases. Small claims dockets were originally conceived as a way for individuals with relatively straightforward cases and relatively low stakes to have their cases heard in court without complicated evidentiary or procedural hurdles that would require the assistance of an attorney.<sup>42</sup> Small claims exist as a case type in all 50 states, and each state has specific laws or court rules governing how small claims are handled. These policies generally include the maximum amount that can be sought, ranging from \$2,500 in Kentucky<sup>43</sup> to \$25,000 in Tennessee and Delaware.<sup>44</sup>

**Fig. 6: Utah Among Highest in Nation in Small Claims Maximums**

Utah is one of a handful of states with small claims limits over \$10,000



In Utah, small claims can be brought for the recovery of money, so long as the amount claimed does not exceed the small claims limit<sup>45</sup> (including attorney fees, but not including court costs or interest).<sup>46</sup> In Utah, small claims court is a division of the Justice Courts, which has jurisdiction over cases filed as small claims. A legal action to recover a debt may be filed either in Justice Court as a small claim or in District Court as a debt claim. Because third-party debt collectors are prohibited from filing in small claims court, claims for sums less than or equal to the small claims limit could be brought in District Court as debt claims rather than as small claims, and many are, according to this report's analysis of Utah court data.<sup>47</sup>

A decision in small claims court is binding upon the parties just as it would be in any other court, and if a party wishes to appeal the decision, they may do so by filing an appeal in District Court.<sup>48</sup> Justice Courts are not "courts of record," which means that a Justice Court hearing would not create a written record of the matter that could then be reviewed upon appeal. Thus, no transcript would be prepared by a court reporter nor any evidence or testimony provided by the parties to the Justice Court preserved as part of a case record.

### De Novo Hearings

When a small claims case is heard on appeal, it must be heard "de novo," or as if it were a brand-new case. In a de novo hearing, the new court is not obligated to give deference to (or take into consideration) the first court's findings of fact or conclusions of law. The new court sees the case as if it had never been brought before any court. There are advantages and disadvantages to a de novo trial. If you made a mistake at the first hearing or left out important evidence, a de novo hearing is an opportunity to try again and put forth a better case. On the other hand, if there is nothing new to add to the case and a party believes that the court made a mistake or the wrong decision given the evidence, a de novo trial presents an additional expense of time, money, and effort without any guarantee of a better outcome.

Additionally, court rules state that, when a small claims case is appealed in a location where a program for small claims mediation exists, parties are required to go to mediation before a Third District Court Judge will hear the matter.<sup>49</sup>

## How Debt Collection Cases Move Through the Courts

In Utah courts, the debt litigation process typically takes place in three distinct stages: pre-judgment, case outcome, and post-judgment. Many of the research findings speak to these different stages of the debt litigation process, which were identified through national research on debt collection and generally apply to most high-volume, business-to-consumer civil dockets.

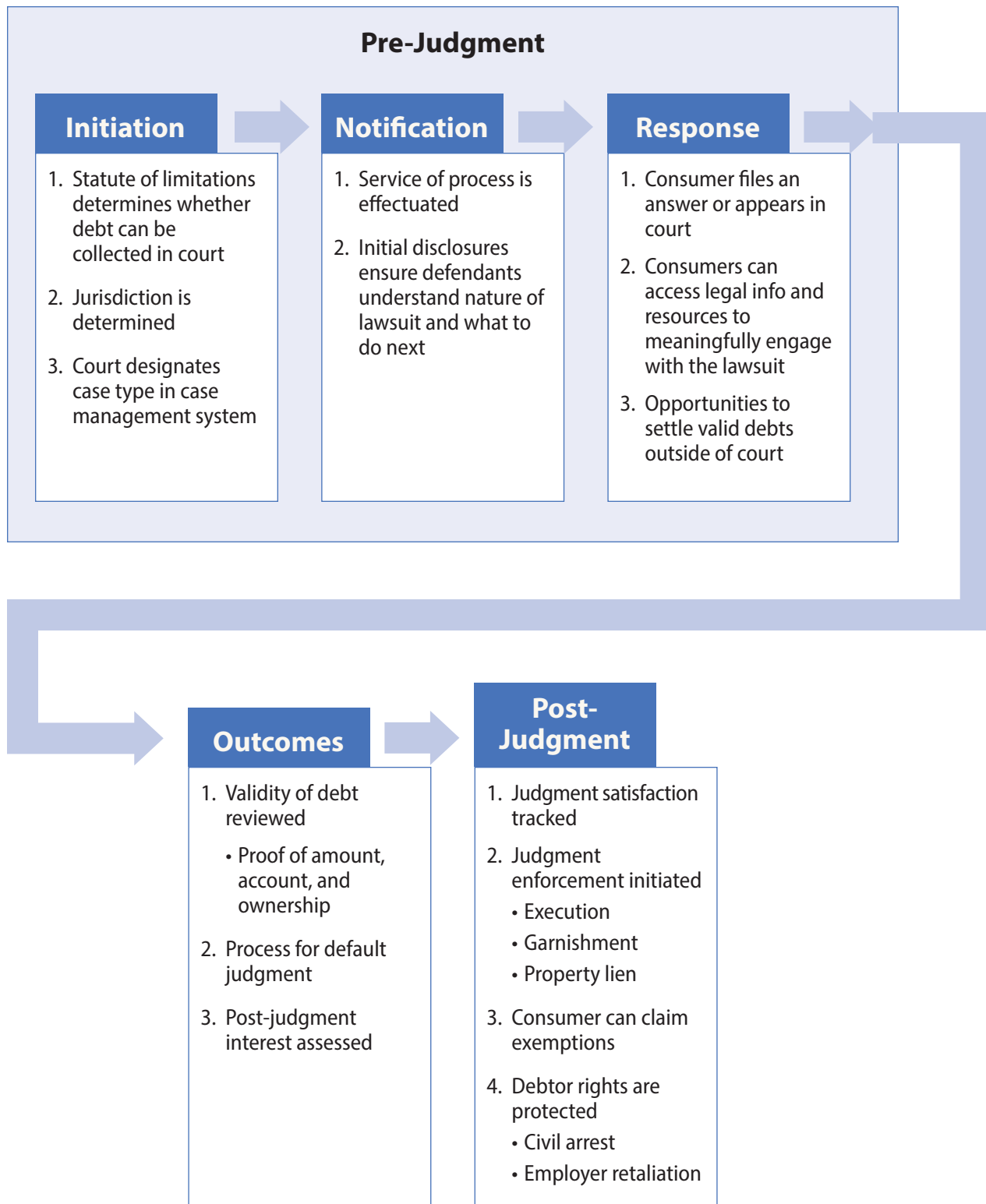
The pre-judgment stage includes the plaintiff's filing of a lawsuit in court, notifying the defendant that they are being sued, and the defendant responding to the lawsuit. The case outcome stage involves a money judgment, settlement, or dismissal of the lawsuit. In debt cases, some judgments are issued "by default," meaning that the defendant did not respond to the case or appear at the hearing. In the post-judgment stage, a plaintiff who has received a judgment in their favor is able to enforce the judgment using collections measures that would not otherwise be available to them, such as garnishing wages, seizing assets, and even issuing an arrest warrant for the defendant.

Generally speaking, these stages apply across debt claims in District Court, small claims in Justice Court, and eviction cases in District Court.

## Image 2: Initiation, notification, and response occur prior to a hearing date

### How Debt Collection Cases Move Through the Courts

Initiation, notification, and response occur prior to a hearing date



# Pre-Judgment

The first phase of debt litigation, called “pre-judgment,” includes everything that takes place prior to a judge making a formal decision on a case. This phase includes the plaintiff’s complaint and summons (case initiation), service of process (notification), and defendant’s answer and/or counter-claims (response). Due to the inherent complexity involved with navigating the court system, this early stage of the court process is often marked by litigant confusion, which can prevent defendant engagement and potentially affect case outcomes.<sup>50</sup>

The Utah courts have taken steps to reduce confusion around the complaint and response process. For example, the courts implemented a custom debt collection lawsuit answer form<sup>51</sup> in December 2017, followed by a complaint form<sup>52</sup> in July 2021. These tools were intended to create a more accessible and usable system for court users without lawyers. The forms follow user-friendly design principles with checklists and plenty of white space; however, there is still a substantial amount of “legalese”<sup>53</sup> that may be confusing for defendants.<sup>54</sup>

## Debt Collections Complaint Form

The image displays three overlapping copies of the "Debt Collections Complaint Form".

- Page 1 (leftmost):** Contains fields for Name, Address, City, State, Zip, Phone, and Email. It includes a "Check your email" note. Below these are checkboxes for "I am" (Plaintiff, Plaintiff's Attorney, Plaintiff/Petitioner's Licensed Paralegal Practitioner) with corresponding Utah Bar # fields. It also has fields for "In the [ ] District [ ] Justice Court of Utah" and "Judicial District" and "County". A "Court Address" field is present. A table-like structure separates Plaintiff and Defendant information. The bottom section is titled "1. Jurisdiction and Venue" and "2. Contract or Agreement".
- Page 2 (middle):** Starts with "My claims are based on defendant's failure to pay a debt owed to someone else. I have the right to collect that debt. Defendant had a contract with: (name of creditor). A copy of that agreement is attached as Exhibit A. The defendant agreed to the following:". It lists "agreement allowed for:" with checkboxes for interest, attorney fees, and collection costs. It includes a section for "Contract or Agreement" where the defendant broke the agreement. The bottom section is titled "Request for Relief".
- Page 3 (rightmost):** Starts with "I have attached the following documents in support of this complaint:". It includes a "criminal penalty under the law of Utah" statement. It has signature and printed name fields for the "Plaintiff" and the "Licensed Paralegal Practitioner of record (if applicable)".

Each page has a footer with the date "4/ July 16, 2021" and the title "Debt Collection Complaint".

Despite such efforts, court data and stakeholder input still revealed several problematic aspects in the pre-judgment phase of litigation. The research team identified six significant pre-judgment problem areas: 1) confusion caused by the Ten Day Summons in District Court cases, 2) complex response requirements for District Court debt defendants, 3) issues with how documentation of debt is communicated in both District Court and small claims, 4) prevalence of low-dollar cases in District Court, 5) inadequacy of the three-day “pay or vacate” window for renters to vacate, and 6) combination of the three-day pay or vacate period and treble damages leading to life-altering debt for renter households.

# Confusion About the Ten Day Summons Inhibits Defendant Participation, Leading to Worse Outcomes for Defendants in Cases Reaching Judgment

In Utah, plaintiffs who intend to file a debt lawsuit in District Court have the option of using the “Ten Day Summons,”<sup>55</sup> a tool used by the plaintiff to serve notice of a lawsuit (including the complaint) on a defendant up to 10 days prior to filing anything with the court or paying any fees. Some plaintiffs attorneys reported that this process is useful in getting debtors’ attention and creating opportunities to settle out of court without formally filing litigation.

## Form: Ten Day Summons

The image displays three overlapping versions of the Utah Ten Day Summons form. The top form is in English, the middle in Spanish, and the bottom in Arabic. Each form contains the following sections:

- Plaintiff/Petitioner Information:** Name, Address, City, State, Zip, Phone, Email.
- Defendant/Respondent Information:** Name, Address, City, State, Zip, Phone, Email.
- Court Information:** In the District Court of Utah, Judicial District, County, Court Address.
- Case Information:** Case Number, Judge, Commissioner (domestic cases).
- Instructions:** A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.
- Footer:** 101YGEJ Approved April 27, 2020 / Revised January 21, 2021. Ten Day Summons. Page 1 of 4.

The Spanish version (middle) includes the following text:

**Cómo responder a la demanda o petición**  
Usted debe presentar su Respuesta por escrito en el tribunal dentro de 21 días a partir de la fecha en que usted recibió la entrega formal del Citaletorio. Puede encontrar el formulario para la presentación de la Respuesta en la página del tribunal: [utcourts.gov/ans-span](http://utcourts.gov/ans-span)

**Entrega formal de la respuesta a la otra parte**  
Usted deberá enviar por correo electrónico, correo o entregar personalmente una copia de su Respuesta a la otra parte (o a su abogado o asistente legal, si tiene) a la dirección localizada en la esquina izquierda superior de la primera hoja del citaletorio.

**Cómo encontrar ayuda legal**  
Para información sobre maneras de obtener ayuda legal, vea nuestra página de Internet Cómo Encontrar Ayuda Legal ([utcourts.gov/help-span](http://utcourts.gov/help-span)). Algunas maneras de obtener ayuda legal son por medio de una visita a un taller jurídico gratuito, o mediante el Centro de Ayuda. También hay ayuda legal a precios de descuento y consejo legal breve.

The Arabic version (bottom) includes the following text:

**كيفية الرد على الدعاوى أو الطلبات**  
يجب عليك تقديم إجابة مكتوبة في المحكمة خلال 21 يومًا من تاريخ تلقيك إشعار المحكمة. يمكنك العثور على النموذج لتقديم الإجابة على الموقع الإلكتروني للمحكمة: [utcourts.gov/ans-span](http://utcourts.gov/ans-span)

**تقديم الإجابة بشكل رسمي للخصم**  
يجب عليك إرسال نسخة من إجابةك إما بالبريد الإلكتروني، أو بالبريد، أو شخصيًا إلى الخصم (أو محاميه أو مساعدته القانونية، إذا كان لديه) إلى العنوان الموجود في الزاوية العلوية اليسرى من الصفحة الأولى من إشعار المحكمة.

**كيفية العثور على المساعدة القانونية**  
للمزيد من المعلومات حول طرق الحصول على المساعدة القانونية، يرجى زيارة صفحتنا على الإنترنت: [utcourts.gov/help-span](http://utcourts.gov/help-span). بعض الطرق للحصول على المساعدة القانونية هي من خلال زيارة ورشة العمل القانونية المجانية، أو من خلال مركز المساعدة. كما تتوفر المساعدة القانونية بأسعار مخفضة واستشارة قانونية موجزة.

Other stakeholders, often representing the defendants, cited the Ten Day Summons as a significant source of confusion for defendants. The Ten Day Summons posted on the Utah Courts website includes the following language at the bottom of the first page: “A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.”<sup>56</sup> At the top of the second page, the Ten Day Summons says: “Call the court to see if a Complaint or Petition has been filed. The plaintiff must file the Complaint with the court within 10 days after service of this Summons on you. If the complaint is not filed within that time, the case is considered to be dismissed and you do not need to file an answer.” Thus instructed, a defendant receiving a Ten Day Summons might call the court clerk for information about their case; however, because the plaintiff has up to 10 days to file, the court will not have a record of the case and cannot provide information to the caller. Stakeholder feedback indicated that some defendants may conclude that because the case has not been filed with the Court and the clerk indicates there is no record of it, the summons was fraudulent or served in error, and they fail to respond or engage further with the case.

Reading further, the Ten Day Summons instructs the recipient to call the court “at least 14 days after service of this Summons to ask if the Complaint has been filed,” but, further down the page, the form states that “The Complaint

or Petition has been filed with the court and explains what the other party is asking for in their lawsuit. Read it carefully.” The form also tells the defendant that “Your Answer must be filed with the court and served on the other party within 21 days of the date you were served with this Summons.” The defendant may attempt to respond to the Ten Day Summons by filing an Answer, but if they do so too early, there will be no corresponding case and the Answer may get lost. If they wait 14 days, as instructed, to find out whether a case has been filed against them, the defendant will have only 7 days to file the answer. This contradictory information, coupled with instructions that the defendant may not be able to follow, inhibits defendant engagement with their case.

Because defendant participation is a significant factor in the ultimate outcome of the case, the court should strive to simplify the language and better explain the timeline and process on the Ten Day Summons to help reduce barriers to participation for defendants.

## Complex Response Requirements Inhibit Defendant Participation, Leading to Higher Default Judgment Rates in District Court

In District Court debt claims, defendants are required to file an answer with the court within twenty-one days after the date of service.<sup>57</sup> The answer must meet certain legal standards that are outlined in the Utah Rules of Civil Procedure. Utah does provide a specific answer form for debt claims on the Court’s Self-Help website for responding to a debt claim, but the amount of legal language used in the form may reduce accessibility for the general public.<sup>58</sup> In contrast, defendants are not required to file an answer in small claims; accordingly, the answer rate for Justice Court small claims (2.3%) is much lower than for District Court debt claims (9.2%). The Utah Courts are currently piloting the use of a web-based application called MyCase that allows individuals involved in debt collections, evictions, and small claims cases to be able to access court documents for their particular case, electronically file court documents, and file a notice of updated contact information.<sup>59</sup>

### Form: Debt Collections Answer

**Form: Debt Collections Answer**

10135JL Approved December 18, 2017 / Revised September 17, 2019

Answer - Debt Collection Case

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## Answer Requirements

The low answer rate for District Court debt claims has significant legal consequences for defendants. If a defendant does not deny the allegations made in the plaintiff's complaint, the court will consider the defendant to have admitted to the allegations.<sup>60</sup> In small claims court, where the answer is not required, the consequence of not filing an answer is the opposite of what happens in debt claims. If a defendant does not file an answer in small claims, allegations are treated as denied.<sup>61</sup> The Court should consider a change to the Rules of Civil Procedure that would lessen the answer requirements in District Court debt cases for amounts in controversy under a certain debt limit (perhaps following the same monetary guidelines as the limits outlined in small claims court).

### Waiting for Defendant's Answer to File Documentation of Debt With District Court Is Inefficient and a Barrier to Legal Assistance

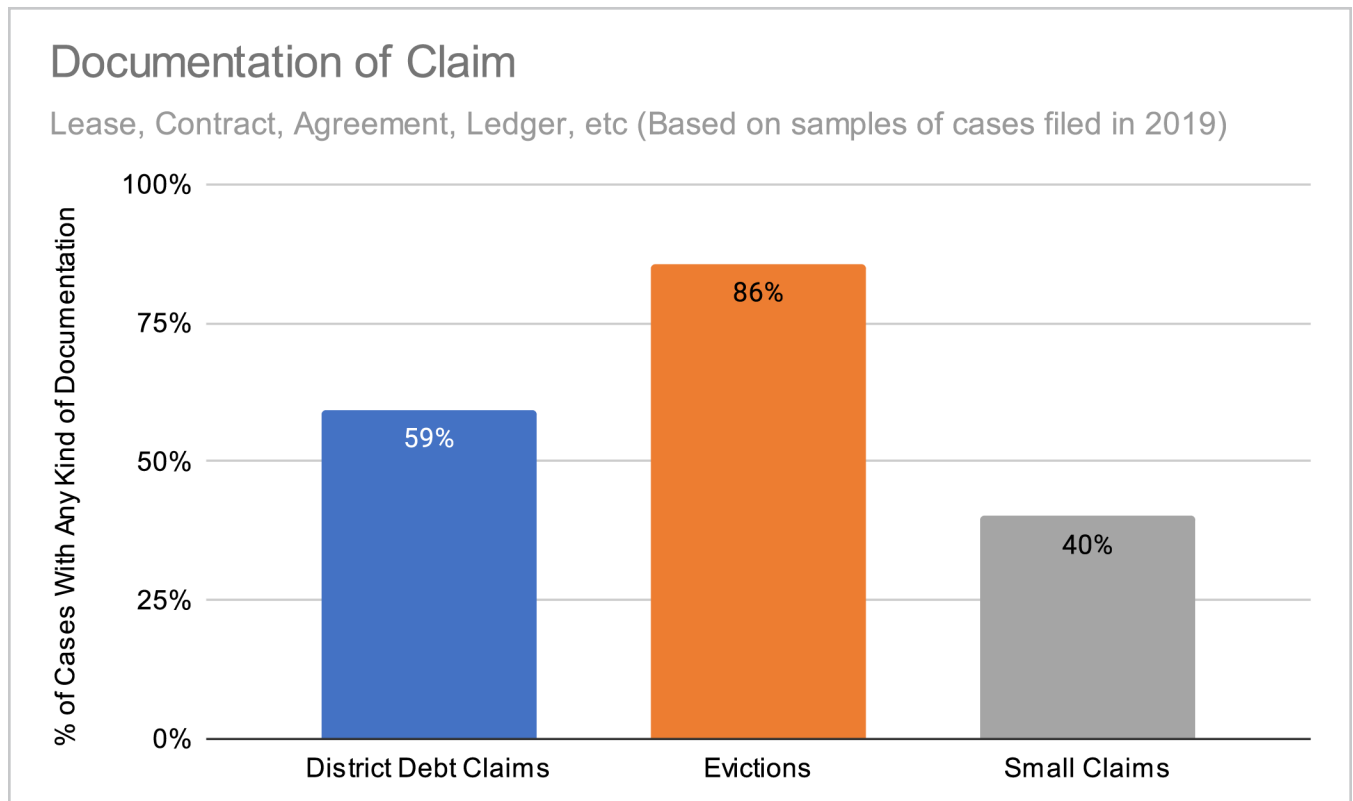
Stakeholders (representing the interests of plaintiffs and defendants) indicated that a lack of documentation on file with District Courts contributes to confusion about the merits of a claim, and is a barrier for defendants seeking help with their cases.

Documentation of debt is essential to determining whether a plaintiff has the right to use the courts to collect that debt as well as for proving the nature and extent of that debt. It can also impact whether a defendant engages with the case. In cases where a debt has been sold or assigned, a defendant may not recognize the name of the party suing them and believe they have received a summons in error without documentation showing the original debt and chain of ownership. Rule 26 of the Utah Rules of Civil Procedure<sup>62</sup> does require plaintiffs in District Court<sup>63</sup> to provide defendants with, among other things,<sup>64</sup> the documentation regarding the debt "within 14 days after the filing of the first answer to that plaintiff's complaint." However, there is no requirement that this information be filed with the Court or provided to defendants who do not file an answer. Stakeholders stated that having documents on file with the court would make it much easier for defendants to seek appropriate advice because the documents would be available online for review or download.

A hand sample<sup>65</sup> of cases filed in 2019 showed that only 59% of District Court debt claims and 40% of small claims had any form of documentation, such as a contract or payment ledger, filed with the courts at the initiation of the case.<sup>66</sup> In contrast, 86% of eviction cases had documentation (in the form of a lease).<sup>67</sup> These data only show whether the documentation was filed with the court at the initiation of the lawsuit; the data do not capture whether a defendant received documentation from the plaintiff prior to or at a hearing nor whether documentation was filed at a later date. While the answer rate for debt claims in 2019 was only 9.2%, the documentation rate was much higher. Stakeholders indicated that some plaintiffs are voluntarily filing documentation with the court in the absence of any requirement to do so because the burden to do so is minimal and it can lead to more efficient resolution of the claim. The Court should consider a rule change that would require that the original creditor be listed on the summons and that plaintiffs be required to file documentation of the debt with the court.

**Fig. 7: Debt Collection Cases Often Lack Documentation**

With the notable exception of evictions, initial filings frequently do not include proof of debt



## District Court Is Being Used to Pursue Relatively Low-Dollar Claims

Utah's Rules of Civil Procedure determine whether a debt claim should be brought to District Court or to Justice Court as a small claims case. One important consideration is the "amount in controversy," or how much money is at stake in a debt collection lawsuit before the addition of court costs, fines, or fees that the court may later assess if it finds in favor of the plaintiff. For example, under Utah Code § 78A-8-102(3), "the judgment in a small claims action may not exceed \$11,000 including attorney fees, but exclusive of court costs and interest."<sup>68</sup> In addition to the amount in controversy, it also matters who is bringing the claim.<sup>69</sup> Per Utah Code § 78A-8-103, only original creditors are permitted to pursue a debt as a small claims action.<sup>70</sup>

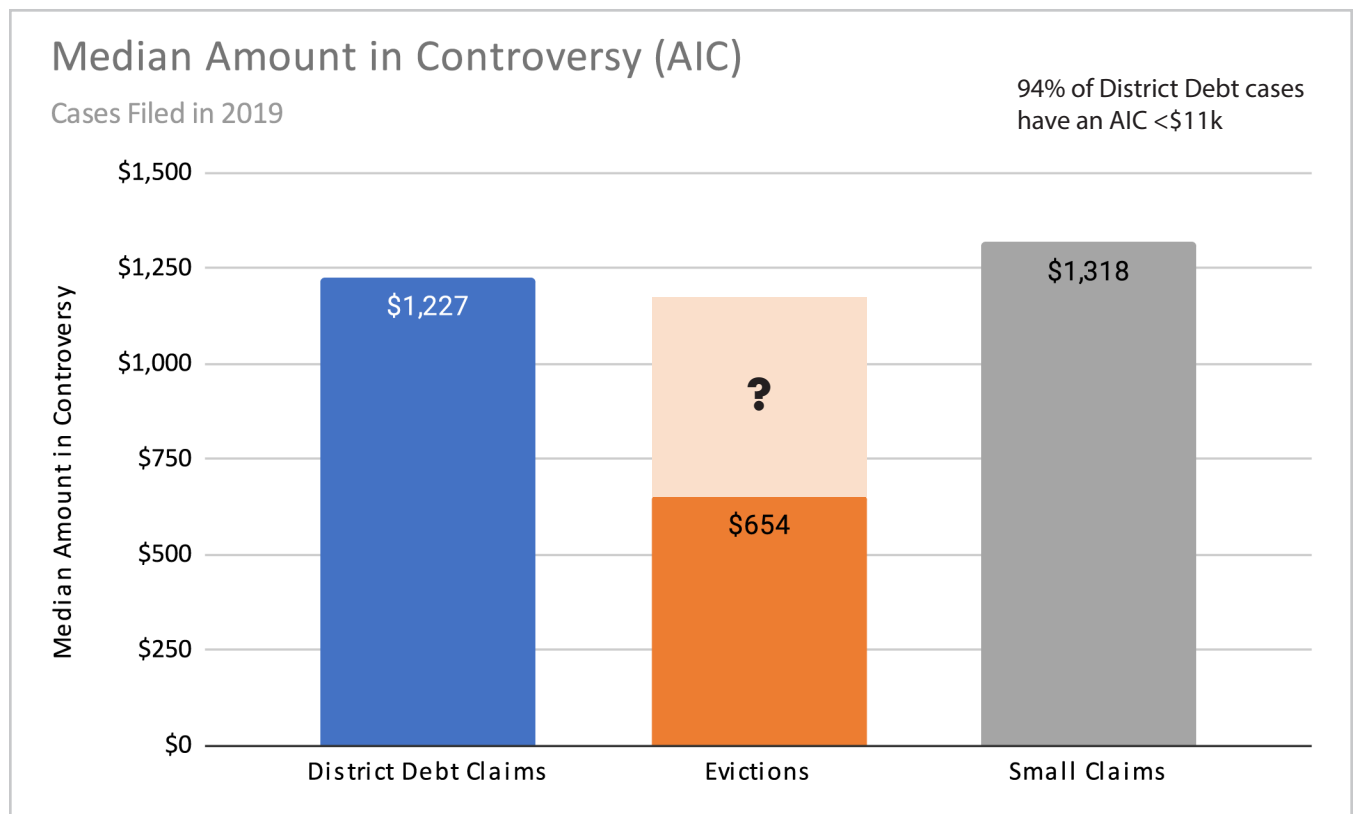
A plaintiff who would like to use the courts to collect on a debt that they obtained from a previous owner (by either purchasing the debt from the original owner or having the original owner transfer their rights to the debt through a process called "assignment") must file a debt claim in District Court.

We compared the amounts in controversy for District Court debt claims, small claims, and eviction cases (which take place in District Court) to understand what is at stake for defendant debtors. For District Court debt claims, the median amount in controversy is \$1,227; for small claims, the median amount in controversy is slightly higher at \$1,318. Further analysis revealed that 94% of debt claims in District Court were brought for amounts less than the small claims limit. Thus, 94% of debt claims filed in District Court could potentially have been brought as small claims, but for the prohibition on third-party debt collectors filing in small claims court or an original creditor's preference.

For evictions, the amount in controversy entered by the Court tells an incomplete story. The median amount in controversy for eviction cases is \$654, which is not only lower than the median amounts in controversy for District Court debt claims, but also lower than the median monthly rent from cases in this study of \$966..<sup>71</sup> These numbers could indicate that eviction cases are being brought where renters are less than a full month behind on rent, that the amount of rent arrears is not accurately reflected in the court data, or that something else is happening that is not captured in the available data.<sup>72</sup> Stakeholders reported that the \$654 amount in controversy for evictions reflects the amount of rent due starting from the beginning of the month through the expiration of the pay or vacate notice. The court uses this number when entering data for the amount in controversy, and the amount does not generally include the remainder of the rent due on the lease, fees, or other alleged damages. Due to treble damages, by the time an eviction is heard in court, the actual amount in controversy would have continued to increase so long as the defendant remained on the premises. Thus, the ultimate amount in judgment would vary greatly from the initial amount in controversy entered in court data. In short, court data around amounts in controversy for eviction cases does not accurately reflect the true amount at stake at the time an eviction case reaches hearing.

### Fig. 8: Low Dollar Claims Dominate in Debt Collection Lawsuits

The median amount in controversy for District Court debt claims is similar to that for Small Claims



## Three (Business) Days Is Too Short a Timeframe for Renters to Move

Utah is one of 12 states (along with CA, FL, ID, IA, KS, MS, NM, ND, OH, WY, and MT) that requires three days' notice before a landlord can file an eviction for non-payment of rent.<sup>73</sup> In Utah, this is known as the "three day notice to pay or to vacate."<sup>74</sup> This notice is often posted on the renter's door. Upon receiving this notice, the renter has three business days to either pay all past due rent and fees or move out of the property. Many stakeholders commented that they themselves would not be able to pack all of their belongings, rent a moving truck, find new housing, and physically relocate within three days, especially given Utah's lack of affordable housing.<sup>75</sup> Even if the renter is able to move out in three days, they are still responsible for all rent and fees associated with the remainder of the lease agreement.<sup>76</sup> If they do not move out and comply with the notice, the landlord is able to begin assessing treble damages.<sup>77</sup>

### Form: Evictions Three Day Notice to Pay or to Vacate

**THREE DAY NOTICE TO PAY OR TO VACATE**

This Notice is given to: \_\_\_\_\_ This Notice is given by: \_\_\_\_\_

Tenant/Occupant Name \_\_\_\_\_ Landlord/Owner Name \_\_\_\_\_

Street Address \_\_\_\_\_ Street Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_ City, State, Zip \_\_\_\_\_

You are behind in your payments required by your rental agreement with your landlord.

You are required to either pay everything you owe as indicated below, or move out within three business days. (Utah Code 78B-6-802(1)(c)) Move out means leave the premises, take all your belongings and leave any keys or access cards.

1. Within three business days, you must pay the entire amount of money that is now owed to your landlord for rent. Business days do not include weekend days and holidays. You do not count the day you receive this notice. The total amount due is \_\_\_\_\_. Rent is due for the following time period(s): \_\_\_\_\_
2. Within three business days, you must pay the entire amount of money that is now owed to your landlord for amounts due under the rental agreement other than rent. Business days do not include weekend days and holidays. You do not count the day you receive this notice. The total amount due is \_\_\_\_\_. The amounts due other than rent are as follows: \_\_\_\_\_
3. If you do not pay all of the money you owe within three business days, you must move out of the premises you have rented. Move out means leave the premises, take all your belongings and leave any keys or access cards. Business days do not include weekend days and holidays. You do not count the day you receive this notice.

If you do not comply you may be determined by a court to be in "unlawful detainer" and evicted. If that happens, you would be removed from the property and may be liable for amounts due under your rental agreement plus attorney fees, court costs and treble damages. Treble damages means three times the amount of the damages. This could include rent, late fees, and property damage.

Information about the eviction process can be found at:  
[www.utcourts.gov/howto/landlord/eviction.html](http://www.utcourts.gov/howto/landlord/eviction.html)

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The court's Finding Legal Help web page ([www.utcourts.gov/howto/legalassist/](http://www.utcourts.gov/howto/legalassist/)) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.

Date \_\_\_\_\_ Landlord/Owner Signature ► \_\_\_\_\_  
Printed Name \_\_\_\_\_

**RETURN OF SERVICE**

This Notice was served upon \_\_\_\_\_ (name) on \_\_\_\_\_ (date) in the following manner (check the appropriate boxes):

☐ A copy was delivered to the tenant/occupant personally.  
☐ A copy was sent through certified or registered mail to the tenant/occupant's address.  
☐ A copy was posted in a conspicuous place on the premises, as no one was home.  
☐ A copy was left with \_\_\_\_\_ a person of suitable age and discretion at:  
[ ] tenant/occupant's residence or [ ] tenant/occupant's place of business  
AND  
a second copy was mailed to [ ] tenant/occupant's residence or [ ] place of business.

Print here \_\_\_\_\_  
Name of person serving this notice \_\_\_\_\_

Sign here \_\_\_\_\_  
Name of person serving this notice \_\_\_\_\_


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This study only examines data for cases that had a legal court action filed against the renter for remaining in the property after the three-day notice period. Stakeholders stated that data is not tracked on the number of renters who comply with a posted three-day "pay or vacate" notice, thus potentially avoiding legal action for both parties altogether. It should be noted that in May 2020, the unlawful detainer statute<sup>78</sup> was amended to require three business days, rather than calendar days, as the minimum period of notice to "pay or vacate."<sup>79</sup> While this was a positive change, most stakeholders and advocates who work with renters agreed that this is still too short of a time period for a renter to move and recommended lengthening the time period a renter has to comply with a pay or vacate notice. Moreover, stakeholders reported anecdotally that, following the switch to three business days' notice, landlords are more likely to post notice to pay or vacate on a Monday or Tuesday rather than on a Thursday, Friday, or weekend day.

We used data from a random hand sample of eviction cases filed in 2019 to estimate how long treble damages typically accrue in eviction cases. For 155 cases in our sample of 364 eviction cases, we were able to determine both the amount of treble damages and the monthly rent on the lease. From these two numbers we were able to estimate how long treble damages had accrued for each of these 155 cases. For these cases:

- ◆ the median number of days for which treble damages accrued was 18,
- ◆ the minimum was 5, and
- ◆ the maximum was 458 days.

Based on these findings, the Utah legislature could consider lengthening the three-day timeframe before treble damages begin to accrue, particularly in light of the lack of affordable housing options and sharp rent increases in the Utah market.<sup>80</sup>



**“The Utah legislature could consider lengthening the three-day timeframe before treble damages begin to accrue, particularly in light of the lack of affordable housing options and sharp rent increases in the Utah market.”**

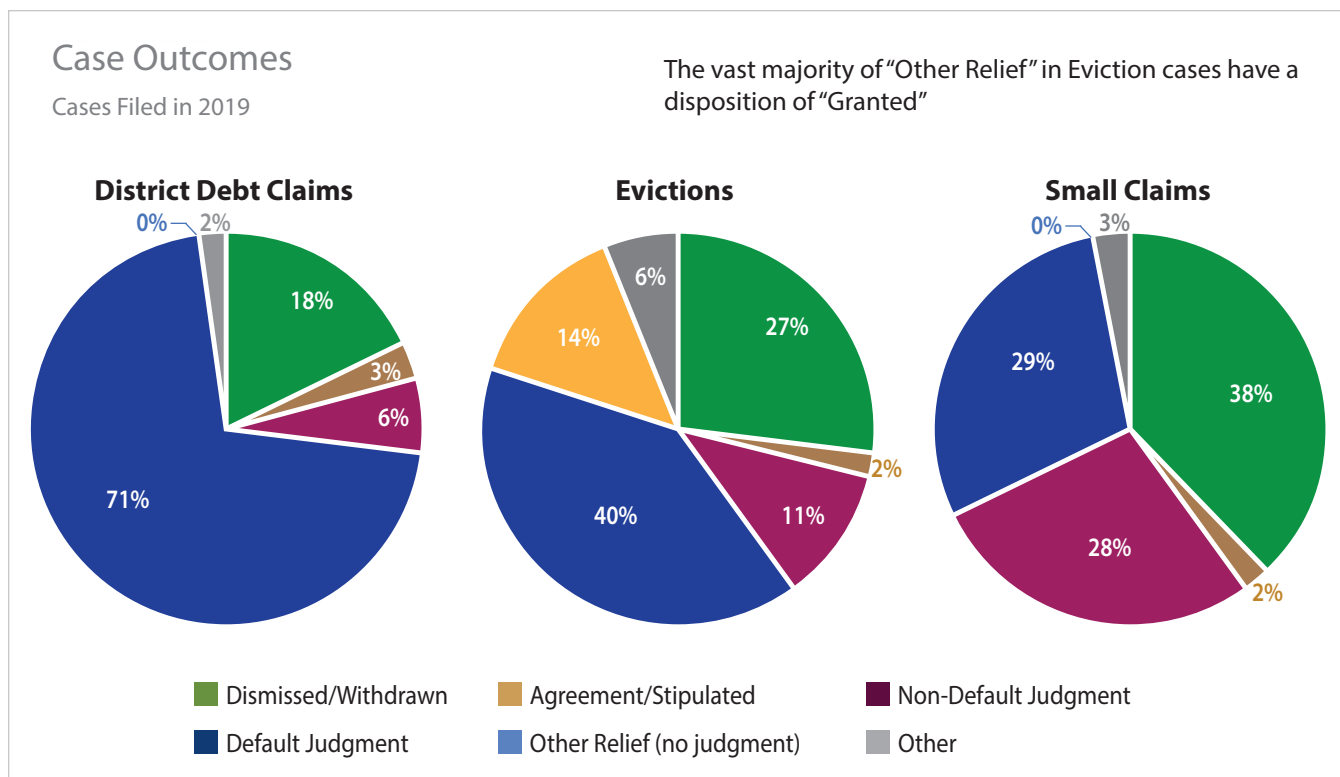
# Case Outcomes

Not all cases filed in court ultimately result in a money judgment. Other outcomes include settlement or dismissal of the lawsuit.<sup>81</sup> In eviction cases, an initial occupancy hearing may determine whether or not the defendant may continue to live in the unit, while any disputes about back rent, damages, or other matters are reserved for a future hearing. For all three case types filed in 2019 – District Court debt claims, Justice Court small claims, and evictions – the most common outcome was some form of judgment: 78% of debt claims,<sup>82</sup> 57% of small claims, and 51% of evictions resulted in either a default or non-default judgment.<sup>83</sup>

A defendant who does not respond to the complaint or appear in court risks having a default judgment entered against them. When a default judgment occurs, a plaintiff has won the case without necessarily proving their claims. If a defendant does participate in their case, it is still possible that a judgment will be entered against them, but it would not be by default (“non-default judgment”). It is also possible for a judgment to be entered against the plaintiff if the defendant filed a successful counterclaim.

**Fig. 9: Case Outcomes Vary Across Case Types**

**Default judgments occur in more than 70% of District Court debt claims**



Among the three case types, there is a notable difference in the proportion of default to non-default judgments. In District Court debt claims, 71% of judgments are by default and only 6% are non-default. For small claims, there is a nearly even split between default (29%) and non-default (28%) judgments. For evictions, 40% of cases resulted in a default judgment and 11% resulted in a non-default judgment.

## Court Process Adds Unexpected Costs

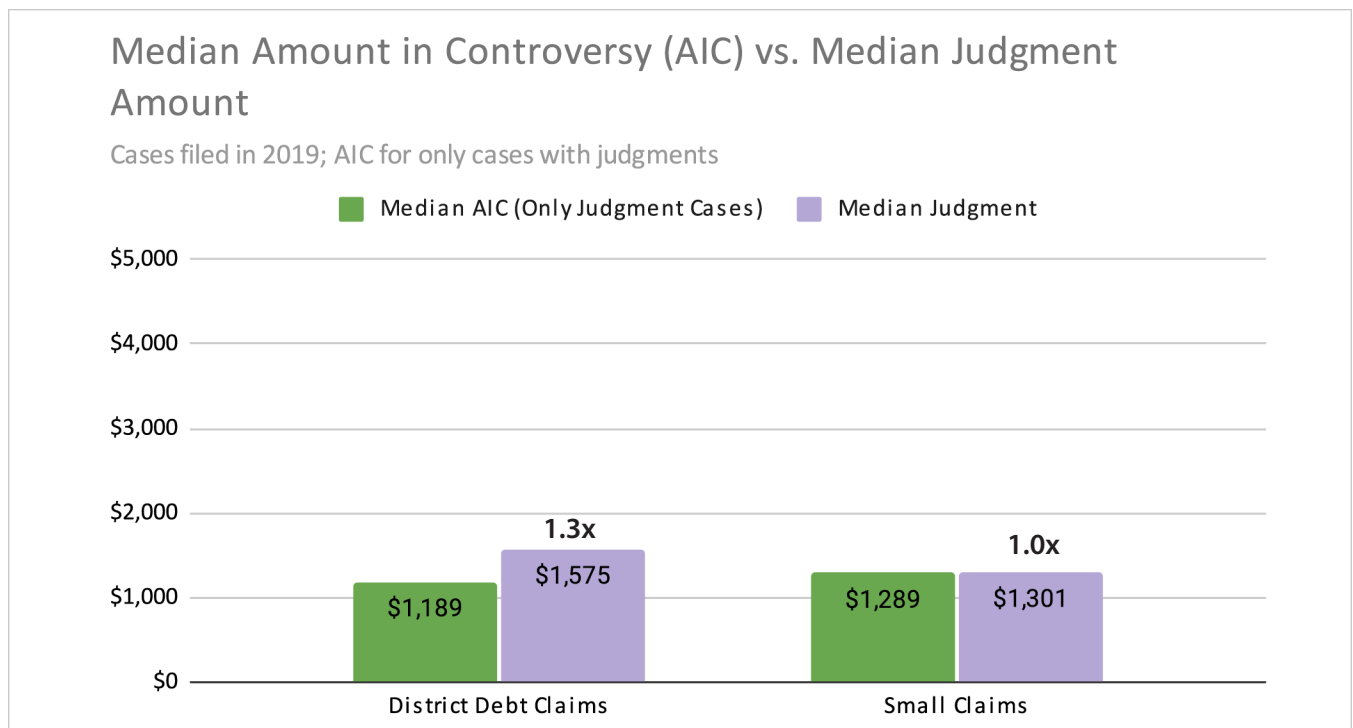
A relatively low-dollar debt claim that goes through the court process usually results in a money judgment that is greater than the original amount in controversy.<sup>84</sup> Court costs, attorney fees, interest rates,<sup>85</sup> and treble damages (in eviction cases) mean that an amount in controversy for debt claims and rental debt can continue to grow even after a lawsuit is filed.

Further, the amount of time it takes to obtain a judgment can impact the ultimate judgment amount.<sup>86</sup> Settling out of court may provide the best outcome for defendants if it means they can avoid the costs<sup>87</sup> of going to court.<sup>88</sup> However, in order for a case to be settled, the defendant in the case has to be willing and able to engage with the landlord/creditor in order to discuss a potential settlement. The original amount in controversy listed on a complaint may not provide defendants with enough information to properly understand the true costs at stake in the case. Access to trained mediators and/or legal assistance for defendants would provide them with a better understanding of their debt obligations, and could aid in deciding whether to settle or seek representation at a debt collection hearing. Legal representation would also be extremely beneficial for a defendant who is being sued by mistake. For those defendants who legitimately do owe a debt, the court process creates additional costs that could have been avoided if the defendant had been better informed earlier in the process. Access to legal services early in the litigation process, such as upon receipt of a debt collector's validation notice or the Ten Day Summons, would help debtors become better informed about their rights and obligations and able to work confidently with their creditors before a lawsuit is even filed.

Without a clear understanding of how the court process can increase their costs, defendants are unable to assess the risk of ignoring the complaint or weigh the potential benefits of engaging with their cases earlier rather than later. We would encourage the Court to consider providing referrals to mediation and/or legal services much earlier in the process rather than at the time of hearing. This could potentially help save court resources with the parties reaching a settlement and avoiding a hearing altogether. The Court could also consider strategies to allow more transparency around the true amount of money at stake, such as by providing an online calculator or worksheet where the parties can input amounts for balanced owed, interest, back rent, treble damages, fees, and other potential costs.

**Fig. 10: Judgment Amounts Higher in District Court**

Even in cases with similar amounts in controversy, defendants see lower judgment amounts in small claims court



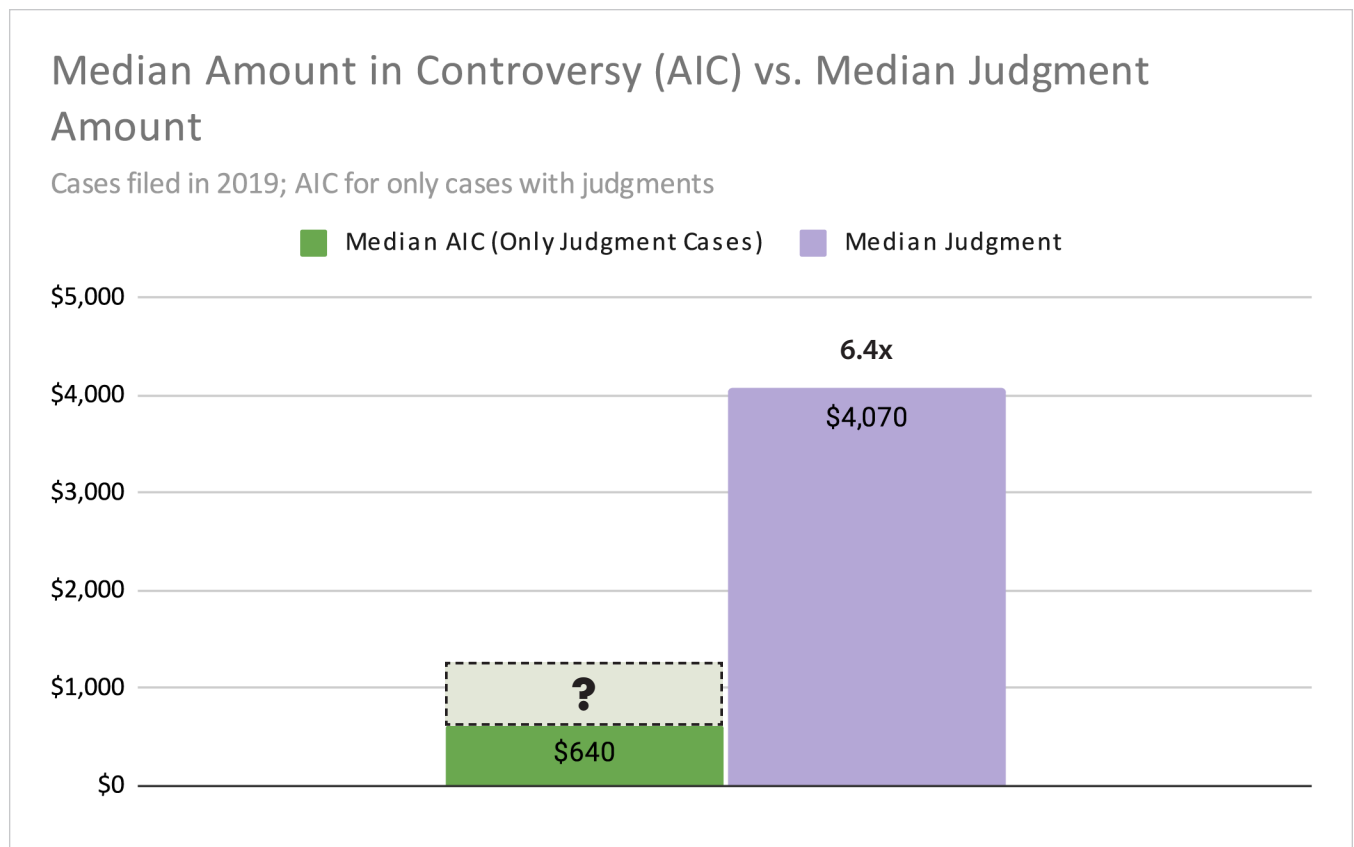
The data from this project reveals that judgment amounts are higher in District Court debt claims than in Justice Court small claims, even for similar amounts in controversy.<sup>89</sup> A median small claims debt of \$1,289 resulted in a median judgment of \$1,301, while a median District Debt Claim of \$1,189 resulted in a median judgment of \$1,575, which is \$274 higher than the median judgment in small claims. Thus, defendants allegedly owing the same amount of debt are likely to experience a worse outcome if the plaintiff pursues the debt in District Court rather than in small claims court. Comparing the median amount in controversy to the median judgment amount suggests that this result is driven by attorney fees<sup>90</sup> and other costs associated with District Court that are not applicable in small claims Justice Court.<sup>91</sup>

## Combined Use of Three Day Notice to Pay or to Vacate and Treble Damages Results in Extremely High Judgments in Eviction Cases

Utah is one of three states in the nation that allow for the combined use of a three-day pay or vacate notice and the award of treble damages in residential eviction cases; of these three states, Utah is the only state where the award of treble damages is mandatory and not in the discretion of the court.<sup>92</sup> As illustrated in the chart below, for eviction cases that result in a judgment, the median amount in controversy recorded in the court data is \$640, which is less than the median amount of one month's rent in Utah and may not accurately reflect the amount in controversy.<sup>93</sup> However, for cases filed in 2019 that ultimately reached judgment, due to the combined use of the three day notice to pay or to vacate and the assessment of treble damages for renters that do not vacate, the median judgment amount escalated to \$4,070 in 26 days, the median amount of time between filing of the case to award of the judgment.

**Fig. 11: Utah's Outlier Evictions Policies Yield High Judgment Amounts**

**In 2019, the median eviction judgment was more than six times higher than original amount in controversy**

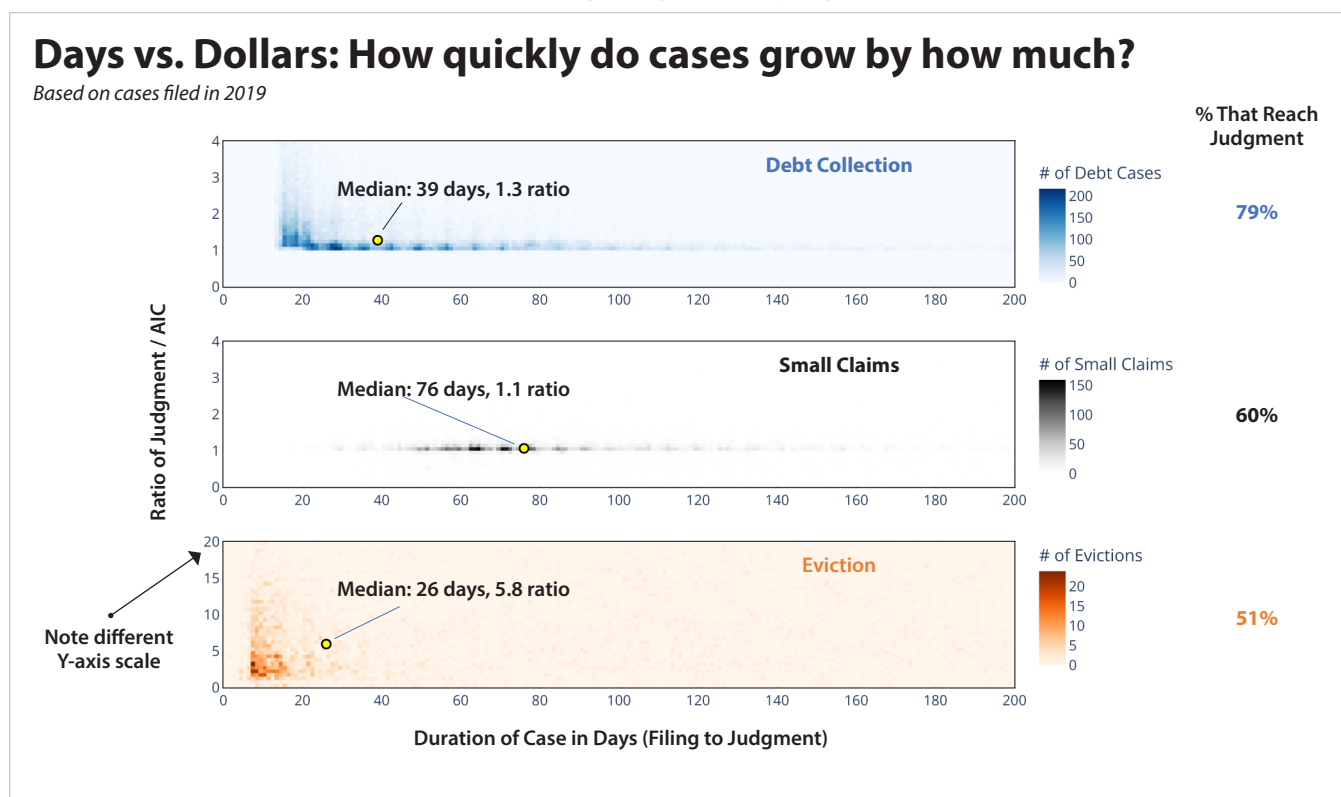


We looked at the relationship between the amount of time it takes for a case to reach judgment and the ultimate amount of the judgment. For cases filed in 2019, we found the following, illustrated in the figure below:

- ◆ The median duration between case filing and judgment is highest for small claims at 76 days.
- ◆ 79% of District Court debt claims filed ultimately resulted in a judgment, compared to 60% of small claims and 51% of evictions.
- ◆ Evictions have the shortest duration at 26 days, but have the fastest growth in judgment amounts.

**Fig. 12: Different Case Types Move Through the Courts at Different Rates**

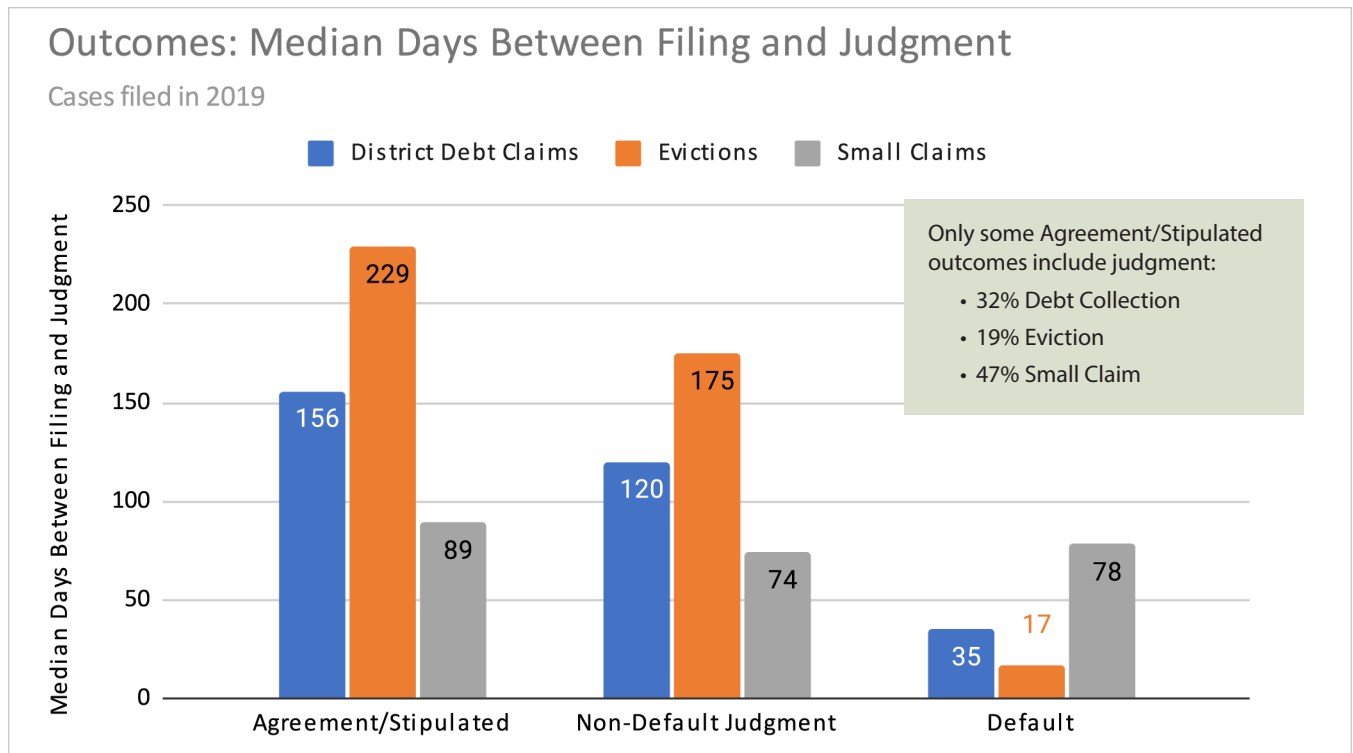
Eviction cases have the shortest duration but highest growth in judgment amounts



The rapid growth in judgment amount for evictions is driven by mandatory treble damages, which the data showed are awarded in 85% of eviction cases. Treble damages begin to accrue three business days after a landlord provides the renter with notice to pay or vacate, and they continue to accrue until the case reaches judgment, even in cases where a renter may have had a valid reason to contest the eviction in court.<sup>94</sup> For cases filed in 2019, the median amount of time for cases to reach judgment was 17 days for cases resulting in a default judgment.<sup>95</sup> For cases with a non-default judgment, the median time to judgment was 175 days, suggesting that defendants who participate in their cases and attempt to defend themselves in court could be exposed to as much as ten times the costs in the form of mandatory treble damages.

**Fig. 13: Median Days Between Filing and Judgment by Case Outcome**

Agreements/Stipulations take longer for all case types than default or non-default judgments



We reviewed the data to see how ultimate judgment amounts compared for different outcomes, and found the following:

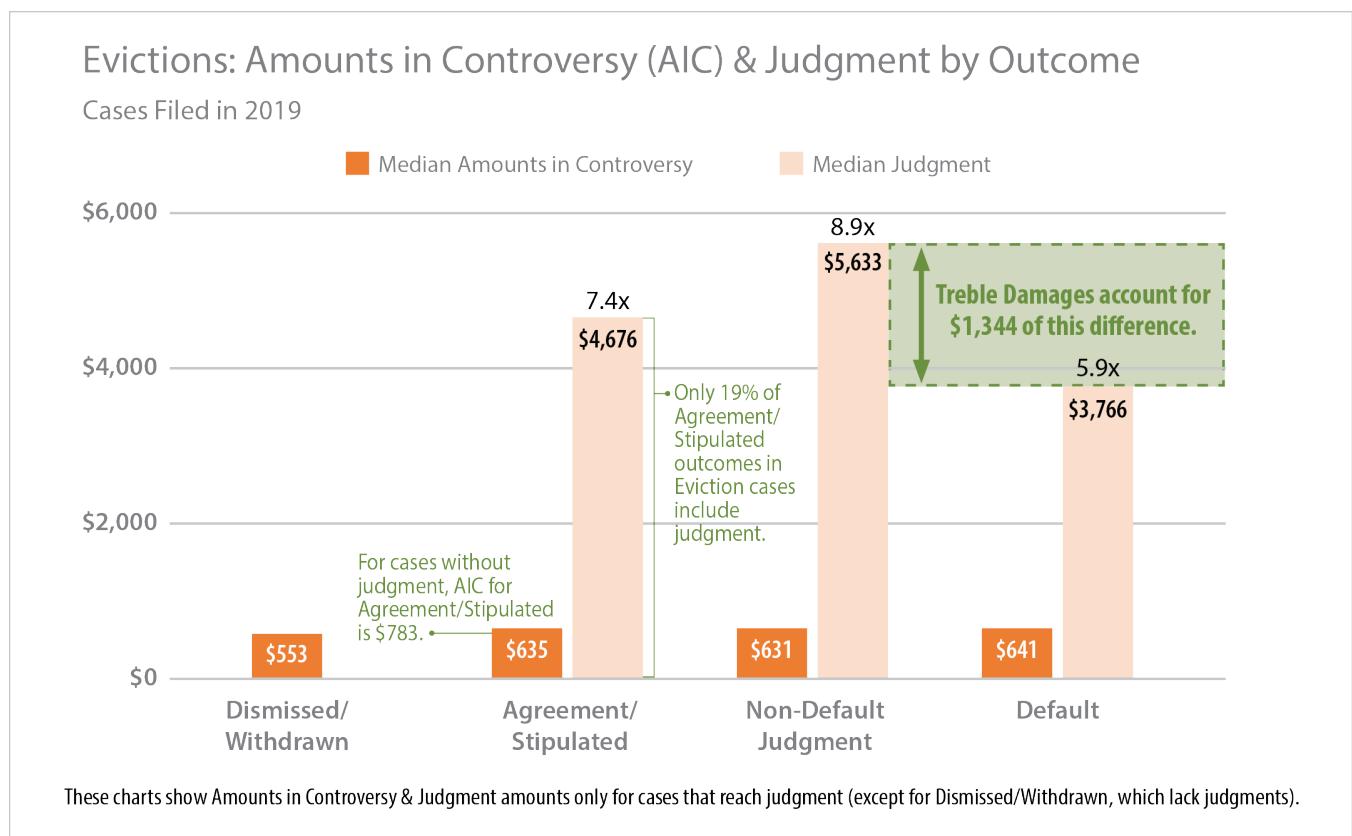
- ◆ The median judgment amount for defendants receiving a default judgment was \$3,766, or 5.9 times the amount in controversy.
- ◆ For cases resulting in a stipulation, the median judgment amount was \$4,676, or 7.4 times the amount in controversy.
- ◆ For defendants whose cases resulted in a non-default judgment, the median judgment amount was \$5,633, or 8.9 times the amount in controversy.

This data appears to show that contesting the claim is more costly for defendants in eviction cases than accepting a default judgment, due to the additional amount of time between case filing and judgment in these cases.



**Fig. 14: Evictions: Amount in Controversy Compared to Amount of Judgment by Case Outcome**

Defendants who engage in their eviction cases receive far higher judgment amounts than those who lose their cases by default



## The Current Attorney Fee Schedule Disincentivizes Defendants From Contesting Small-Dollar Debt Claims in District Court

Changes to Rule 73 of the Utah Rules of Civil Procedure in 2018 decoupled the amount of attorney fees allowed from the amount of damages sought, reasoning that an attorney's fee should be based on their time and effort, not the amount at stake in a case. Thus, per Rule 73(f)<sup>96</sup> of the Utah Rules of Civil Procedure, a plaintiff in a District Court debt claim may be awarded up to \$350 in attorney fees for uncontested cases (that end in default judgment) and up to \$750 in attorney fees for contested cases (where the defendant shows up to defend themselves).<sup>97</sup> In contrast, attorney fees were awarded in fewer than 1% of small claims cases in 2019. For some low-dollar debt claims, the current rule can lead to an award of attorney fees greater than the original amount of debt that was filed with the court.

From January 1, 2019, through September 30, 2021, 106,281 District Court debt collection cases resulted in a default judgment.<sup>98</sup> Of these, 14,228, or 13%, concerned an amount in controversy less than the \$350 attorney fee that was awarded as part of the default judgment. These cases had an average amount in controversy of \$144, meaning that the attorney fee was 2.4 times greater than the amount of debt at stake in the claim.

In other words, the District Court awarded attorney fees that were greater than the amount in controversy against defendants in more than 14,000 debt claims that resulted in a default judgment. We recommend that the Court consider a different approach to award of attorney fees in cases with amounts in controversy up to the \$350/\$750 attorney fee amounts in the current schedule.

# Post-Judgment

After a judgment has been entered by the court, several things may happen, depending on the nature of the debt, how the judgment was obtained, or the plaintiff's behavior and/or priorities. One outcome is that a defendant pays (or "satisfies") the amount owed on the judgment. Under Rule 58B of the Utah Rules of Civil Procedure,<sup>99</sup> the plaintiff must acknowledge that the judgment has been satisfied by filing an acknowledgement of satisfaction with the court within 28 days after full satisfaction.<sup>100</sup>

However, as with pre-judgment and case outcome phases, researchers found common issues occurring during post-judgment: 1) judgments often go unsatisfied, 2) interest rates are incorrectly applied to unpaid judgments, and 3) courts often have no way of contacting defendants if the defendant does not provide updated contact information. In short, the time-consuming, expensive process of collecting debt through the courts not only upends the lives of defendants, but rarely results in plaintiffs receiving the money they are owed.

A court judgment provides plaintiffs a vehicle for court-enforced debt collection against a defendant. Even a default judgment can lead to harmful consequences for defendants, including garnishment.

Garnishment is the process by which a creditor can seize a defendant's property, including money in a bank account and/or wages, in order to satisfy a judgment. Garnishment laws cover issues such as how much of a debtor's wages can be taken at once, what property might be exempt from garnishment, and the process by which a judgment debtor might assert any exemptions. These laws vary at the state level according to what is being garnished and what type of debt the garnishment is meant to satisfy.<sup>101</sup> For example, states may grant more latitude for collecting on back taxes or unpaid child support than for collecting consumer debt. Federal law limits the maximum amount of wages that may be garnished per week,<sup>102</sup> and prohibits employers from retaliating against employees who have their wages garnished.<sup>103</sup>

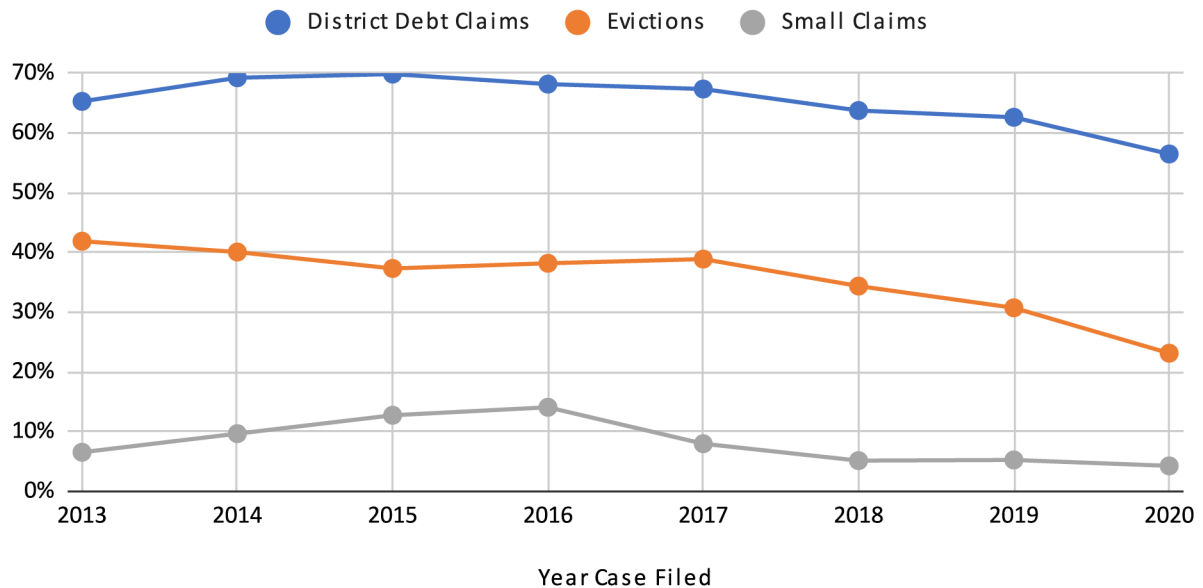
From 2013 through 2020, we found a consistently high incidence of garnishments in District Court debt claims, and in a substantial number of eviction cases. Garnishment appears to occur less frequently in small claims court. Utah limits garnishment to either 25% of a person's disposable earnings per week or 30 times the federal minimum wage, whichever is less.<sup>104</sup> We were not able to ascertain what percentage of a defendant's wages were garnished, but note that District Court debt claims had both the highest incidence of garnishments as well as the highest incidence of default judgments.<sup>105</sup>

**Fig. 15: Percent of Judgments Resulting in Garnishment**

The vast majority of District Court debt collection judgments are followed by some form of garnishment

### Garnishment Rate

Cases with Garnishments / Cases with Judgments



## Many Judgments Remain Unsatisfied Years Later

Analysis of court data showed as long as four years after a judgment has been entered that only 50% of judgments in District Court debt claims, 35% of judgments in small claims, and 18% of judgments in evictions are reported to the court as satisfied, which plaintiffs are required to do within 28 days of the judgment being satisfied. For District Court debt cases alone, Utah courts awarded plaintiffs more than 385,000 judgments from 2013 through 2020, totaling nearly \$2 billion. Together, the unsatisfied judgments amount to \$1.22 billion. Among the cases examined, the median amount of debt in judgments that went unsatisfied was 1.5 times higher than the median amount in judgments that were paid off. Because the courts do not track ultimate satisfaction amounts or progress in paying off judgments over time, it is not clear from the available data why so few judgments are satisfied. It is possible that some debts are satisfied, but neither party files notice of satisfaction with the court. Stakeholders reported anecdotally that a satisfaction would not be filed in cases where the judgment debtor ultimately filed for bankruptcy.<sup>106</sup> Rule 58B does require that, if the satisfaction is filed for part of the judgment, “it must state the amount paid or name the debtors who are released.”<sup>107</sup> We believe a deeper look at the post-judgment process may shed light on potential impacts on plaintiffs, such as the costs associated with renewing and enforcing judgments; however, a lack of data around the post-judgment process may hinder an evaluation of its impact on defendants.

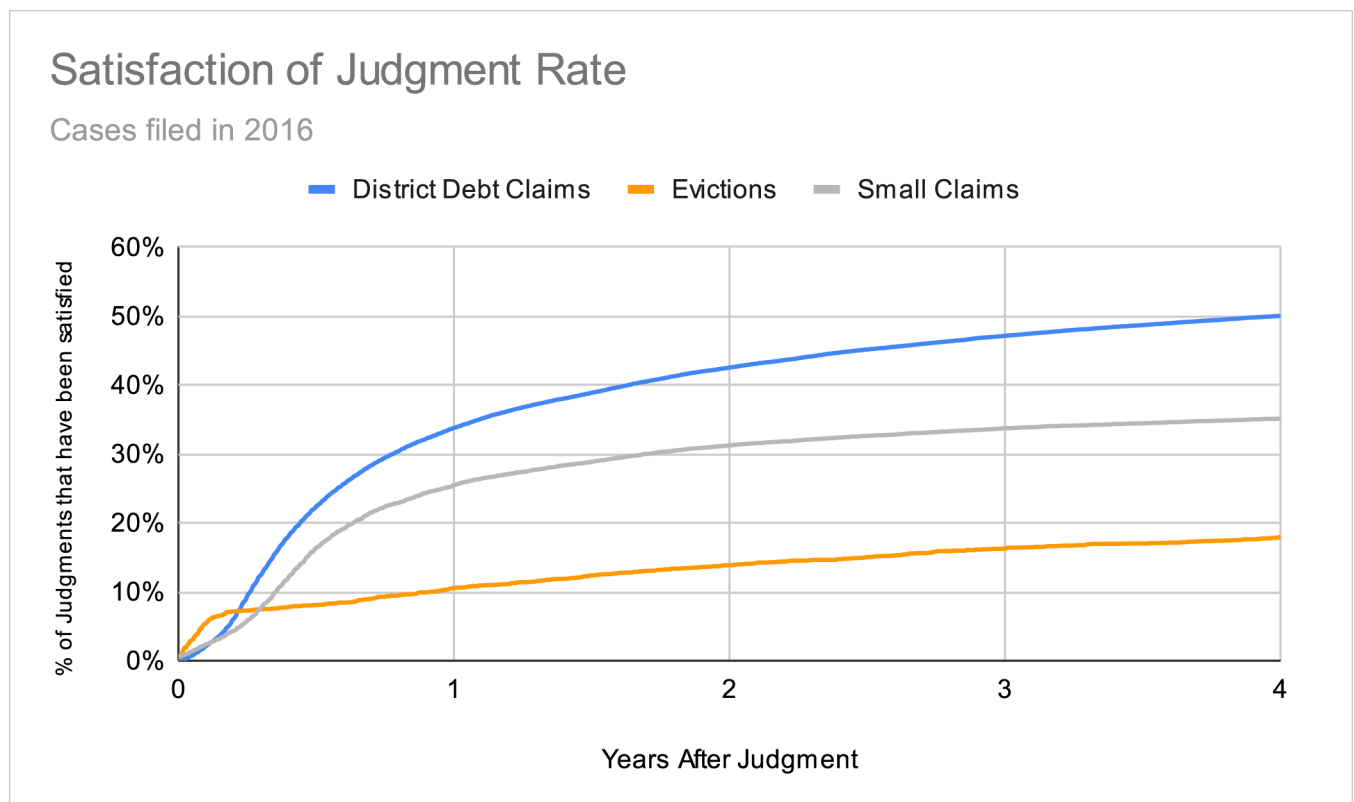
For those judgments that are satisfied, it is not clear whether defendants ultimately paid the entire amount of the judgment (plus post-judgment interest and other costs), or whether plaintiffs are writing off some portion of the amount awarded by the court. Stakeholders speaking from the perspective of eviction plaintiffs stated that they frequently write off portions of the debt related to treble damages and applied interest once a defendant has paid all hard costs that the landlord incurred during the eviction process. Because the court does not track payment on judgments, require accounting to be filed, nor record the actual amount paid at the time of satisfaction, it is not possible to measure whether or to what extent this post-judgment debt is being written off. It is also not possible to measure the impact of post-judgment interest rate amounts on satisfaction rates. What we can see is that evictions result in the highest median judgment amounts, have the highest median post-judgment interest rates, and the lowest rate of satisfaction.

A hand sample of cases filed in 2019 revealed the following median post-judgment interest rates:

- ◆ 4.59% interest rate in Justice Court small claims;
- ◆ 12.59% interest rate in District Court debt claims; and
- ◆ 24% interest rate in eviction cases.

**Fig. 16: Four Years Later, a Majority of Money Judgments Are Not Satisfied**

Eviction cases, which result in the highest amount of post-judgment debt, are the least likely to be satisfied

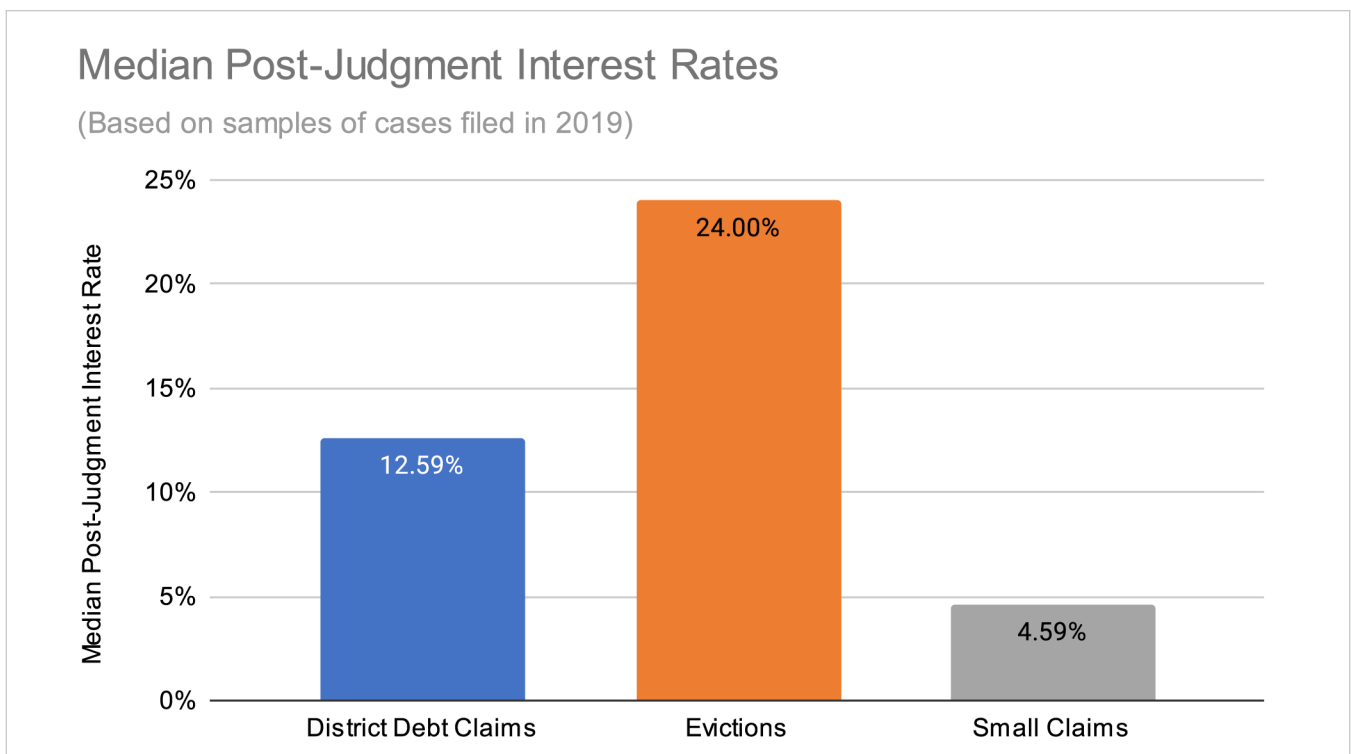


**Table 3: Satisfaction Statistics**

Cases from 2013–2020	District Debt Claims	Evictions	Small Claims
Total Amounts in Controversy	\$2.68 Billion	\$112,869,852	\$323 Million
# of Cases with Judgment Awarded	385,886	28,026	89,145
Total Dollars of Judgments Awarded	\$1.94 Billion	\$165 Million	\$169 Million
# of Judgments remaining unsatisfied (As of December 2021)	202,360	22,925	58,317
% of Judgments remaining unsatisfied as of December 2021	52%	82%	65%
Total Dollars of Unsatisfied Judgments (As of December 2021)	\$1.22 Billion	\$143 Million	\$119 Million
% Dollars of Unsatisfied Judgments	63%	86%	70%
Median Unsatisfied Judgment	\$1,706	\$3,517	\$1,200
Median Satisfied Judgment	\$1,124	\$2,946	\$1,089
Ratio	1.5	1.2	1.1
% of all Judgments with Garnishment	66%	36%	8.5%
# of Unsatisfied Judgments with Garnishments	137,207	2,501	3,480
% of Unsatisfied Judgments with Garnishments	68%	11%	6.0%

**Fig. 17: Post-Judgment Interest Rates Are Highest in Evictions**

District Court debt claims and small claims apply the statutory rate; evictions include post-judgment interest in the lease



## Post-Judgment Interest Rates Are Applied Incorrectly

Interest continues to accrue on a debt after judgment according to the rate specified in the contract or lease where the debt originated. If the interest rate is not specified or the contract is not available, Utah law provides a statutory rate of the federal rate plus 2% or 10%, pursuant to Utah Code §15-1-1 and Utah Code §15-1-4. A hand sample of cases filed in 2019 revealed that the vast majority of judgments include the post-judgment interest rate set by statute, which changes each year according to the federal rate.<sup>108</sup>

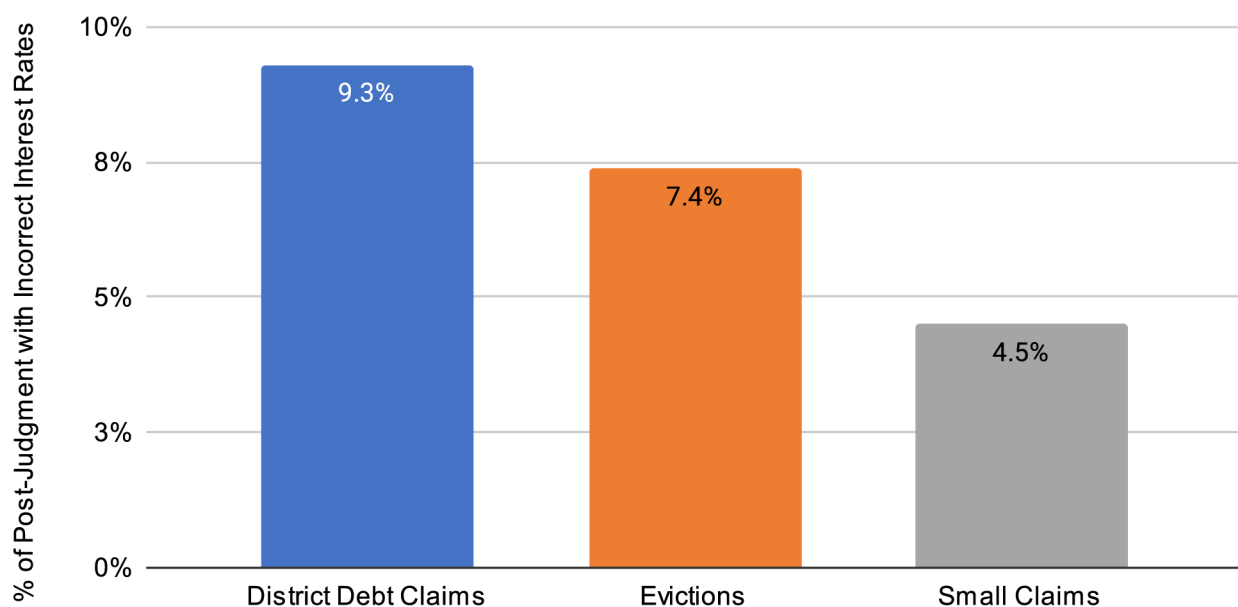
However, for 4.5% of small claims, 7.4% of evictions, and 9.3% of debt claims, the interest rate applied to the judgment appears to be in error. When the researchers reviewed the interest rates applied, the errors appeared to result from either applying the prior year's rate (perhaps due to a plaintiff's attorney failing to update forms for the new year) or failing to add the applicable 2% or 10%<sup>109</sup> interest rate at time of judgment. Because the applicable interest rate fluctuates from year to year, the consequences of applying a prior year's rate could be a lower or higher award for the plaintiff, and thus a lower or higher post-judgment cost for the defendant.

**Fig. 18: Rate of Mistakes in Applying Correct Post-Judgment Interest Rates**

Post-judgment interest errors can increase or decrease the amount owed by a defendant

### Post-Judgment Interest Mistake Rate

Incorrectly applying Utah Code Section 15-1-4 (Based on samples of cases filed in 2019)



### Historic Post Judgment Interest Rates

#### Current Post Judgment Interest Rates

Pursuant to Utah Code Section 15-1-4, the post judgment interest rates for the current and previous years are as follows. This rate does not apply to judgments based on contracts or statuses specifying a different post judgment interest rate, or to judgments under \$10,000 regarding purchase of goods or services.

2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
2.29%	2.09%	3.53%	4.59%	3.76%	2.87%	2.65%	2.27%	2.13%	2.16%	2.12%	2.30%

## Service to Vacated Addresses

After an eviction, a landlord may pursue an action against their former renter seeking compensation for damage to the rental unit that the landlord alleges is beyond normal wear-and-tear. Some stakeholders stated that, in these cases, the landlord often sent notice to the address where the renter had been evicted; this action is referred to as “service to vacated addresses.” We reviewed a random hand sample of eviction cases filed in 2019 to better understand this issue, and found that in 15% (53/364) of cases, at least one document was served on the defendant at the rental property more than 14 days after the defendant had moved out. The actual percentage may be higher than we could measure with a high degree of certainty for the available data. Utah law was recently updated to state that it is the former renter’s responsibility to provide an updated address to the landlord and the court.<sup>110</sup> The burden of tracking down the renter does not fall to the landlord.

Under Utah law, a landlord must return a former renter’s security deposit within 30 days, which could be an incentive for a renter to provide their former landlord with their contact information.<sup>111</sup> Some former renters may believe that the landlord will withhold the security deposit and apply it against back rent or damages owed. The MyCase system, recently launched by the Utah courts, allows defendants with ready access to the internet to file a “Notice of Change of Address and/or Contact Information” with the court.<sup>112</sup> Filing the notice through MyCase may satisfy the requirement of serving notice of the change of address on the other party, per UCRP 5.<sup>113</sup> It should be noted that in some cases where notice is served to a vacated address, it is possible for a former renter (defendant) to receive actual notice by other means, such as through mail forwarding. If the defendant has provided the court with their new address, the court may send notice of hearing, even though the plaintiff used the wrong address.<sup>114</sup> Additionally, plaintiff attorneys sometimes email documents to defendants as well as serving them by mail. However, out of the 53 cases we identified with service of a document to the vacated address, only 7 (13%) were both emailed and mailed, with the remaining 46 (87%) only mailed. Further, in our sample, we only flagged whether cases had at least one occurrence of service to a vacated address. It is possible that, in some cases, multiple documents were served to the vacated address. The majority of the documents we identified in our sample that were served at the vacated address were notices of judgment (30/53 or 57%). The MyCase system also allows renters to review legal documents, find appropriate answer forms, and file forms electronically with the court.



# Practice and Policy Recommendations

The following solutions serve as a starting point for addressing some of the problems identified in the findings. Some proposed solutions are relatively straightforward, codifying best practices identified by stakeholders in the field. Some solutions may be pursued alone, while others are best pursued in tandem as part of an overall strategy to reduce the burden of debt litigation on courts and promote efficient use of resources. A precedent exists for this kind of problem-solving, as states across the country have enacted policies meant to improve standards for notice, disclosures, response, evidence, and other aspects of the debt collection litigation process.


## Potential Solutions for Utah

### Increase Opportunities for Settlement Prior to Hearing

Many District Court debt claims or small claims cases that end up in the court system could have been settled at any point prior to the case reaching judgment, including pre-hearing and even before case filing. However, consumers may be reluctant to engage with plaintiffs outside of court for a number of reasons, including lack of information about how to respond or the consequences of not responding, power imbalance between represented plaintiffs and unrepresented defendants, fear of being scammed, or belief that engaging with the case may require a greater investment of time, money, and effort than they are able to expend. Thus, for some plaintiffs, filing a court case is the last resort once they have exhausted allowable options for communicating with a debtor under debt collection regulations. For defendants of legitimate debt claims, settling a filed claim prior to judgment could be less costly than receiving a judgment, due to court-imposed fees, post-judgment interest, attorney fees, and potential garnishment. For plaintiffs, settling out of court also avoids court costs and the time and effort required to enforce judgments. Courts would be relieved of processing claims where there is no issue in controversy. Cases that are ripe for settlement could be diverted from the court system entirely; failing that, case management by the courts (after filing but prior to hearing) can ensure more efficient use of court resources.

Pre-court diversion, originating in the community or the court, could promote productive communication between the parties and help defendants make informed decisions. Pre-court diversion could take place prior to or upon the issuance of the Ten Day Summons and could include access to resources such as financial counseling, mediation and/or legal counsel to help a debtor understand their rights, debt obligations, and potential risks. Existing case management interventions currently available for filed claims, such as mediation and online dispute resolution, could also be offered prior to case filing. These measures should include resources such as court navigators or representation to help defendants understand court procedures and costs, and to support communication between the parties.

Once a case has been filed, these resources could be made available as part of case management before a hearing is scheduled. Pre-trial conferences could ensure that both parties are available and ready to proceed. Each of these interventions can ensure that hearings are reserved for cases in which court intervention is truly needed for case resolution.



Eviction diversion is a growing movement across the nation. The University of Utah S.J. Quinney College of Law has signed on in support<sup>115</sup> of the August 2021 “Call to Action” from the United States Department of Justice to prepare to address a “looming housing and eviction crisis.”<sup>116</sup> The National Center for State Courts (NCSC) has launched an eviction diversion initiative to help courts build on best practices and knowledge gained during the pandemic and “create permanent change to their high-volume, high-impact eviction dockets.”<sup>117</sup> NCSC has also issued a whitepaper with best practices, informed in part by an evaluation of Utah’s Online Dispute Resolution Platform,<sup>118</sup> and emphasizing clear, holistic goals, cross-sector collaboration, comprehensive communication, accessibility, and data-driven evaluation and learning.<sup>119</sup>

### **Target Resources for Rural Areas with High Concentrations of Debt Litigation**

The data from this project show that debt litigation activity is not evenly distributed across Utah’s counties. In rural counties with higher concentrations of debt litigation, the burden of administering these claims may be out of proportion to the resources allocated to the courts. Resources impact the courts’ ability to provide each case the attention required to ensure that the plaintiff has met their evidentiary burden and that the defendant has been provided with a meaningful opportunity to engage with their case. Without these assurances, it is unclear how consistent outcomes can be achieved. In order to support the fair administration of justice in all counties, court resources should be allocated so that there is parity based on case volume. Pursuing parity in combination with diversion and other case management methods outlined in this report should result in court resources being targeted where they are most needed. These resources can include funding for legal services (from brief advice or counsel to full representation), mediation, training for court personnel on how to communicate with defendants, and dedicated dockets administered by personnel and members of the judiciary who have been thoroughly trained in the laws that govern debt collection in Utah.

### **Require Plaintiff to File Documentation Proving They Are Entitled to Recover from the Defendant Before Granting a Judgment by Default**

In most civil lawsuits, a plaintiff must show they are entitled to the relief they are seeking before they can be heard by the court. Once a plaintiff is before the court, they must prove their claims using evidence. The data show a high volume of District Court debt collections cases, with a high rate of default judgments, but the data did not show whether the necessary evidence was made available for review by the court. The Rules of Civil Procedure regarding failure to respond to a District Court debt claim permit, but do not require, the court to review plaintiff’s evidence before entering a default judgment. Requiring this evidence to be filed with the court promotes transparency and public faith in the administration of justice.<sup>120</sup> In other words, while the data have shown that the amounts in controversy in District Court debt claims and small claims are similar, different standards of law will apply to a defendant depending more on where the case was filed than on the merits of the case. While default judgments were far lower in small claims court than in District Court debt claims, the low rate of documentation filing in small claims indicates that increased documentation requirements for plaintiffs are warranted in these cases also.

In all District Court debt claims and small claims, plaintiffs should have to demonstrate they own the debt through a credible chain of title; that the defendant is the debtor; and if the debt was sold to them by the original creditor, that the debtor was properly notified of the transaction. Plaintiffs' proof must be more than a robo-signed affidavit; at the very least, plaintiffs should have to provide documentation of the debt. Evidence in the form of business records must be properly offered, authenticated, and accepted into evidence by the court in accordance with the rules of evidence and applying relevant hearsay considerations. One potential way to implement this recommendation is by adding a special rule for debt collection cases in District Court, analogous to Rule 26.3 in eviction cases.

### **Reconsider Response Requirement for Low-Dollar Claims in District Court Debt Cases**

When a defendant fails to respond in small claims court, they are presumed to have denied the allegations in the claim. In District Court, when a defendant fails to respond, this results in a default judgment. As the data showed, the median amount in controversy for small claims and debt claims is similar. However, the consequences for a defendant in a case with similar stakes are very different depending on whether the litigation is filed in District Court as a debt claim or in Justice Court as a small claim. With 94% of District Court debt collection cases falling under the current small claims threshold of \$11,000<sup>121</sup> and with the prohibition of third-party debt buyers from filing in small claims court, opposite procedural conclusions result in inequitable outcomes for defendants who have no say in where a case has been filed. This practice of not requiring a response for low-dollar claims could be adopted in District Court to ensure equitable outcomes without flooding small claims court with the high volume of District Court debt claims.

### **For District Court Debt Claims, Require Disclosures at Time of Filing, Similar to Rule 26.3 Requirements in Evictions**

Rule 26.3 of the Utah Rules of Civil Procedure is an exception to Rule 26 that applies in evictions. Rule 26.3 ties a plaintiff's duty to provide the defendant with documentation supporting their legal claim to the filing of the complaint, rather than to the defendant's answer as Rule 26 requires in general civil claims. Debt claims and evictions together make up ninety-four percent (94%) of general civil case filings; having analogous filing requirements would standardize the procedure across the bulk of District Court general civil claims. Requiring proof of debt to be available at the time of filing decreases the chance that non-meritorious claims will be brought to court.

With limited resources for legal assistance available to Utahns, practices that promote efficient use of legal assistance are invaluable. For those defendants who are able to access legal assistance, their attorneys are better equipped to provide valuable advice and counsel when the documents filed against their clients are available via XChange for review. When the documents have been filed online with the courts, defendants' attorneys can more quickly review the case and assess whether to go to hearing or negotiate a settlement prior to going to court. When documents are not filed online, attorneys must rely on clients, who may lack access to transportation, technology, or secure document storage to provide this critical information.

Both our data and stakeholder input suggests that at least 59% of plaintiffs are already voluntarily filing documentation with the court in the absence of any requirement to do so, because the burden to do so is minimal and it can lead to more efficient resolution of the claim. This practice should be codified throughout the state courts to ensure that documentation of original debt is available to all parties and to the court from the beginning of the claim.

## **Training for Court Personnel and Judiciary**

The recommendations for improvement are twofold: 1) through training, ensure the spread of and subsequent use of best practices in courts throughout the state, and 2) through such training promote consistency, predictability, and the assurance of public trust in the judicial process.

It will be vital for Utah's courts to improve and make widely-known standards for reviewing filings and scheduling hearings for these types of cases.

## **General Data Recommendations**

The Utah Courts should be commended for being willing to look at ways to improve their data collection processes. We would recommend that they consider streamlining the data entry process, reduce errors in data entry and categorization, and improve the functionality of existing technology such as XChange and MyCase to better serve the needs of all court users.

## **Add MyCase Functionality Prior to Filing**

To promote defendant engagement and facilitate communication between the parties to a debt lawsuit, it would be helpful if a consumer who anticipates a lawsuit being filed against them (for example, a pending eviction case), to be able to create a MyCase profile in advance of litigation. This would allow the defendant to update their contact information with the court when necessary, which in turn could help provide additional assurance that the defendant receives proper notice that a legal action has been taken against them. Additionally, this would allow a defendant to also upload any documentation received (such as a Ten Day Summons that might not have been filed with the court yet) so that it is accessible as they are seeking pre-court guidance and throughout the life of the claim. Using MyCase to set up notifications when/if the plaintiff decides to file the case with the court helps keep the consumer apprised of upcoming hearing dates and whether it is time to file an answer to the complaint.

## **Continue Improving Forms for Readability and Accessibility**

Making court forms readable and accessible is not an issue unique to Utah. Considerable thought and effort go into ensuring that forms meet the needs of constituents. Utah has already begun this work, by creating forms that include Spanish and QR codes for readability in other languages. Investments in improving form readability and accessibility ultimately assist in reducing defendant confusion while promoting equitable access to the courts. Reducing “legalese” in forms by promoting “plain language” reduces the need for technical training to understand how to properly use the forms. Continuing to invest in improvements for form readability and accessibility also reduces complexity for small business owners who may bring their cases to small claims court, or who may find the garnishment process confusing.

## **Reconsider Flat Attorney Fee Rates for Claims Less than \$350/\$750**

Allowing a flat fee for all cases may provide predictability and reduce confusion about what is at stake for a defendant in a debt claim. The \$400 difference between attorney fees (\$350 in uncontested claims and \$750 in contested claims) promotes the idea of defendants not actively seeking justice in their case but instead encourages defendants to default. This is particularly true for low-dollar claims. Moreover, the ability to collect an outsized fee

for a small-dollar debt incentivizes bulk filing of minor claims that clog court dockets and contribute to courts being used to generate revenue for debt collectors rather than to resolve issues between two parties. We recommend that the Court consider a different approach to attorney fees in cases with amounts in controversy up to the \$350/\$750 attorney fee amounts in the current schedule.

### **Increase Court Oversight of the Post-Judgment Process**

The court's role in debt collection litigation should not end upon entry of judgment. By maintaining some oversight of the post-judgment process, the court can promote transparency around the efficacy of specific policies, such as post-judgment interest rates and garnishment as well as the utility of courts as a vehicle for debt collection generally. Examples of court oversight could include:

- ◆ Requiring creditors to file periodic statements with the Court of judgments currently in payment.
- ◆ Providing a payment calculator on the website so parties can ascertain the timeline for a payment plan, including post-judgment interest.
- ◆ Requiring that all Notices of Satisfaction of Judgment filed with the Courts include the actual amount paid by the defendant from the entry of the initial judgment.

Further research/data is needed to investigate why so many judgments remain unsatisfied year after year.

### **Clarify the Statute of Limitations/Allowable Amount of Time Between Occupancy Judgment and Suit for Damages**

Rule 59 of the Utah Rules of Civil Procedure limits the amount of time to modify a judgment to 28 days.<sup>122</sup> In May 2020, Utah's unlawful detainer statute was amended to allow up to 180 days (from the time an order of restitution is enforced or the defendant no longer occupies the premises) for a party to ask the Court to modify the judgment.<sup>123</sup> This change has led to some confusion among practitioners, which the courts should clarify. Stakeholders indicated that the change may have been prompted by landlords needing more than 28 days to assess damages from a former renter, as the next occupant is frequently the one to discover problems with the rental unit. Stakeholders also indicated that 180 days is too long, such that the discovery of damages is too attenuated from the evicted renter's occupancy to be fairly assessed.

# Conclusion

The problems and solutions outlined in this report offer a path forward for improving debt collection litigation processes for all Utahns.

Like other state courts around the country, Utah's District Courts and Justice Courts are handling a large and growing number of debt collection cases primarily involving corporate plaintiffs and individual defendants who are navigating the civil system without an attorney. Although the current system was not designed to perform under such circumstances, implementing policy changes can help ensure that Utah's courts are appropriately utilized as a place where every person facing a debt collection case has a fair chance at a just outcome.

## Methodological Notes

### Definitions

#### HAND SAMPLE

Because the Court's database did not contain certain variables of interest, such as type of debt and post-judgment interest rates, we analyzed random samples of cases to obtain this data and get a more complete picture of debt collections in Utah's courts. If a random sample was needed for any of the three case types studied (District Court debt claims, small claims, and evictions), that sample was chosen at random from cases filed in 2019. To calculate sample sizes, we chose a 95% confidence level and a confidence interval of 5, which, together with the total number cases filed by case type, gave us the number of cases to sample for each case type.<sup>124</sup> No cases were excluded from the sample.

#### COURT OBSERVATIONS

For purposes of this project, Court observations were conducted virtually, as the Court had an administrative order that all civil cases be heard virtually due to the COVID-19 pandemic.<sup>125</sup>

#### STAKEHOLDER INTERVIEWS

For the purposes of this project, stakeholder interviews were conducted to assist with identifying needs, concerns, and professional expertise on debt collection issues in Utah. A semi-structured interview protocol was created asking questions on the debt collection process, effects on defendants, court process related to debt collection, and more. Stakeholders were offered the choice of meeting virtually or in-person depending on the current COVID-19 pandemic restrictions.

### Methods and Limitations

#### GENERALLY

Data from 2013 through 2020, the most recent years for which we have complete data, are used to show trends over time. Utilizing a snapshot comparison among case types, the data is from 2019, the most recent year unaffected by the COVID-19 pandemic's impact on court activity and policies such as moratoria on evictions.

Because the Utah courts do not collect demographic data (such as race, age, disability status, or family status) at least in civil cases, opportunities for direct analysis of whether debt litigation impacts some people more than others were limited. Without this knowledge, it may be difficult for Utah Courts to evaluate and adopt policies that serve the justice needs of all Utahns. We would recommend that the Utah Courts Office of Fairness and Accountability work with stakeholders to identify and collect useful aggregated demographic data so that they can further the mission of their office.

### **PRE-JUDGMENT**

Unless stated otherwise, the analysis of the data sets included in this report did not separate cases where a defendant was a company rather than a person; however, because these cases are relatively rare, excluding them from the analysis would not significantly change the result.

### **CASE RESOLUTION**

Legal assistance can range from brief advice and counsel to full representation. We were interested in measuring the impact of defendant participation on case outcomes; however, the limitations of the available data mean that not all possible impacts could be observed. In particular, it is not possible to observe the potential impact of diversion of the Ten Day Summons using court data, because potential cases that resolve after the Ten Day Summons is served yet before formal court filing is required would not appear in the court's data. Moreover, for cases that are filed with the court but resolve prior to entry of judgment, the court may or may not capture an outcome regarding ultimate settlement if the parties choose to withdraw their case rather than enter into a stipulated agreement.

### **POST-JUDGMENT**

With available court data, we were able to review whether a satisfaction of judgment was filed, the amount of time that elapsed between entry of judgment and satisfaction of that judgment, and whether garnishment took place between entry of judgment and prior to satisfaction. Court data does not include the actual amount paid by the defendant, which could be higher or lower than the judgment amount.

### **EVICCTIONS**

As with debt collection, this report does not cover evictions that occur prior to court involvement where a renter voluntarily vacates the rental property after receiving the three day pay or vacate notice from the landlord.

### **BANKRUPTCY**

The topic of bankruptcy came up in conversations with both creditor and debtor stakeholders. While federal bankruptcy data is public record, it is beyond the purview of the state courts to provide, and is beyond the scope of this project.

# Appendices

## Appendix A. Debt Case Stages

- I. Pre-Judgment.** This stage includes the plaintiff's filing of a lawsuit in court and notifying the defendant that they are being sued, and the defendant responding to the lawsuit.
- II. Case Outcomes.** This stage represents the outcome of a debt collection lawsuit, which generally includes a money judgment, settlement, or dismissal of the lawsuit. A judgment could be by default, meaning that the defendant did not respond or appear at the hearing, and thus the plaintiff wins the case. A non-default judgment usually requires some engagement by the defendant, and could be in favor of the plaintiff or defendant. A settlement is generally an agreement by the parties as to payment of the debt (in whole or in part), including the terms of a payment plan, applicable interest rates, and who is responsible for any fees. A settlement can occur before a lawsuit is initiated and at any point until a judgment is entered (post-judgment settlement is covered under "satisfaction of judgment"). A case could be dismissed at the discretion of the judge if the case lacks merit or if the proper procedures have not been followed. A plaintiff could also withdraw the claim or request a voluntary dismissal for a variety of reasons such as the defendant agreeing to settle the claim or the plaintiff learning the defendant's only sources of income are not subject to garnishment. Depending on the circumstances of the case and the type of dismissal granted, a dismissed case may or may not be brought into court again in the future.
- III. Post-Judgment.** If a plaintiff receives a judgment in their favor, they are able to enforce the judgment using collections measures that would not otherwise be available to them. These include garnishing wages, seizing assets, and even issuing an arrest warrant for the defendant. From 2016-2019, an average of 35.6% of eviction cases resulting in a judgment included a writ of garnishment. Other than these enforcement measures, which require additional court process, the court is not actively involved in monitoring payments on the debt unless the defendant requests a modification or the plaintiff renews the garnishments or files a satisfaction of judgment.

## Appendix B. Lists of Top Filers

### Top 20 Plaintiffs: District Debt Claims

Plaintiff	# of Cases	% of cases	Cumulative %
1. Express Recovery Services	8667	14.56%	14.56%
2. NAR	5426	9.12%	23.68%
3. Bonneville Billing and Collect	5083	8.54%	32.22%
4. Mountain Land Collections	4356	7.32%	39.54%
5. Midland Funding	3584	6.02%	45.56%
6. Portfolio Recovery Associates	3500	5.88%	51.44%
7. Knight Adjustment Bureau	2547	4.28%	55.72%
8. LVNV Funding	2144	3.60%	59.32%
9. Capital One Bank	1729	2.90%	62.22%
10. Desert Rock Capital	1455	2.44%	64.67%
11. Discover Bank	1182	1.99%	66.65%
12. RC Willey	1083	1.82%	68.47%
13. American Express National Bank	884	1.49%	69.96%
14. Cavalry SPV I	774	1.30%	71.26%
15. Meade Recovery Services	725	1.22%	72.48%
16. Titanium Funds	671	1.13%	73.60%
17. Synchrony Bank	659	1.11%	74.71%
18. Outsource Receivables	639	1.07%	75.79%
19. Barclays Bank Delaware	540	0.91%	76.69%
20. Citibank NA	507	0.85%	77.54%

### Top 20 Plaintiffs: Small Claims

Plaintiff	# of Cases	% of cases	Cumulative %
1. Money 4 You	2573	14.18%	14.18%
2. Mr Money	2348	12.94%	27.11%
3. 1st Choice Money Center	902	4.97%	32.08%
4. Dollar Loan Center	837	4.61%	36.69%
5. Tosh	602	3.32%	40.01%
6. Lift Credit	571	3.15%	43.16%
7. Tosh Inc DBA Check City	550	3.03%	46.19%
8. USA Cash Services	534	2.94%	49.13%
9. Mariner Finance	447	2.46%	51.59%
10. Loyal Loans	325	1.79%	53.38%
11. Loans for Less	311	1.71%	55.10%
12. Goldenwest Federal Credit Union	299	1.65%	56.74%
13. Lend Nation	295	1.63%	58.37%
14. Red Rock Financial	259	1.43%	59.80%
15. Cash in Minutes	256	1.41%	61.21%
16. Weber State University	183	1.01%	62.21%
17. Horizon Credit Union	160	0.88%	63.10%
18. LendNation	143	0.79%	63.88%
19. Action Rent to Own	139	0.77%	64.65%
20. (Check City) Tosh	120	0.66%	65.31%

## Appendix C. Recent Utah Initiatives

During the 2021 legislative session, the Utah Legislature approved \$300,000 in one-time funding to pilot a statewide housing mediation program. Utah Community Action (UCA), which is one of nine agencies in the Community Action Partnership of Utah,<sup>126</sup> was awarded the pilot funding through a statewide grant process. UCA had been providing mediation services in local communities for five years, and this funding allows UCA to offer mediation services statewide through the Utah Community Action Partnership (CAP) network as of January of 2022. UCA provides low-income families and individuals with holistic support through wrap-around services.<sup>127</sup> Participants in the UCA Landlord Tenant Mediation Program will be able to access these statewide resources to assist with stabilization and self-sufficiency when their immediate housing crisis has been resolved. More information about UCA and its mediation programs is available at their website.<sup>128</sup>

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### Endnotes

1. Available at: <https://www.utahfoundation.org/uploads/rr776.pdf>
2. At the time of writing, a statutory amendment raising the \$11,000 limit for small claims up to \$25,000 by year 2030 had been passed by the legislature and was awaiting the Governor's signature.
3. In Utah, as in other jurisdictions, a corporation is required to be represented by an attorney in court. See *Tracy-Burke Assocs. v. Department of Employment Sec.*, 699 P.2d 687, 1985.
4. The other two states are Idaho (Idaho Code § 6-31) and Montana (M.C.A. § 70-27-206), all of which permit, but do not require, the court to award treble damages in residential evictions. The notice periods for Idaho (Idaho Code § 6-303(2)) and Montana (M.C.A. §70-24-422(2)) are three calendar days.
5. Garboden, P.M.E. & Rosen, E., *Serial Filing: How landlords use the threat of eviction*, City & Community (2019).
6. Williams, G.A., Recent developments concerning the purchase of consumer debt; defining potential problems and proposals for suggested solutions, 11 J. Bus. Entrepreneurship & L. 255 (2018).
7. Wilf-Townsend, Daniel, "Assembly-Line Plaintiffs," *Harvard Law Review*, forthcoming, <https://ssrn.com/abstract=3919050>
8. Williams, J. Bus. Entrepreneurship, 11.
9. P. Kiel, "So Sue Them: What We've Learned about the Debt Collection Lawsuit Machine," ProPublica, May 5, 2016, <https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine>.
10. Center for Microeconomic Data, "Household Debt and Credit Report (Q4 2021): Auto Loan Originations Help Drive Total Household Debt to \$15.58 Trillion," Federal Reserve Bank of New York, accessed March 11, 2022, <https://www.newyorkfed.org/microeconomics/hhdc.html>.
11. Analysis from the Center for Budget and Policy Priorities: Federal and state relief efforts targeting pandemic-related hardships appear to have worked for a time, but issues persist in 2021. <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and>
12. K. McKellar, "Utah ranks No. 1 in the nation for GDP growth – despite the pandemic," Deseret News, August 11, 2021, <https://www.deseret.com/utah/2021/8/11/22620136/utah-ranking-in-nation-gdp-growth-despite-pandemic-economy-growth-forbes-ranking-salt-lake-city>

13. Data from the Board of Governors of the Federal Reserve System, [https://www.federalreserve.gov/releases/z1/dataviz/household\\_debt/state/map/#year:2020](https://www.federalreserve.gov/releases/z1/dataviz/household_debt/state/map/#year:2020).
14. Urban Institute, “Debt in America: An Interactive Map,” March 31, 2021, [https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct\\_debt\\_collections&state=49](https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=49).
15. The Pew Charitable Trusts, “State Policymakers Are Working to Change How Courts Handle Eviction Cases” (2021), <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/08/26/state-policymakers-are-working-to-change-how-courts-handle-eviction-cases>.
16. *Id.*
17. *Id.*
18. In August 2020, the Utah Supreme Court launched the Office of Legal Services Innovation to oversee testing new services and model policies. See: <https://evictioninnovation.org/>.
19. National Center for State Courts, <https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program>.
20. <https://utahinnovationoffice.org/about/what-we-do/>.
21. Data from the Eviction Lab, <https://evictionlab.org/map/#/2016?geography=states&type=er&locations=49,-112.183,38.88%2B16,-115.31,43.929%2B56,-107.562,43.004>.
22. For an idea of how evictions move through the court system in Utah, see the “Eviction Roadmap” on the Utah Courts website: [https://www.utcourts.gov/howto/landlord/docs/Eviction\\_Summary.pdf](https://www.utcourts.gov/howto/landlord/docs/Eviction_Summary.pdf)
23. In Idaho and Montana, treble damages may be awarded for unlawful detainer pursuant to Idaho Code § 6-31 and M.C.A. § 70-27-206, respectively. In Arkansas, treble damages are mandated for unlawful detainer in commercial or mixed-use property, not for residential property. A.C.A. § 18-60-309.
24. In Utah, evictions are actions for “Unlawful Detainer,” but the same remedies apply as for Forcible Entry and Forcible Detainer.
25. Utah Code § 78B-6-811.
26. Data from the U.S. Census Bureau, <https://www.census.gov/quickfacts/UT>.
27. <https://multicultural.utah.gov/race-eviction-rates/>.
28. K. Sabbath, “Erasing the ‘Scarlet E’ of Eviction Records,” *The Appeal*, April 12, 2021, <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records/>.
29. M. Desmond and C. Gershenson, “Housing and Employment Insecurity among the Working Poor,” *Social Problems*, Advance Access, January 11, 2016, 1-22, <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>.
30. Aspen Institute, “A Financial Security Threat in the Courtroom” (2021), [https://www.aspeninstitute.org/wp-content/uploads/2021/09/ASP-FSP\\_DebtCollectionsPaper\\_092221.pdf](https://www.aspeninstitute.org/wp-content/uploads/2021/09/ASP-FSP_DebtCollectionsPaper_092221.pdf).
31. More thorough information on these procedures as well as legal self-help resources can be found at <https://www.utcourts.gov/>.
32. <https://www.utahfoundation.org/uploads/rr776.pdf> at 1.
33. *Id.* at 9.
34. The Pew Charitable trusts, “How Debt Collectors Are Transforming the Business of State Courts” (2020), <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>

35. Justice Courts handle criminal misdemeanors, traffic cases, and small claims. Small claims are essentially the only civil case type heard in Justice Court.
36. In Utah, the category of “General Civil” case types does not include probate, domestic, or tort cases.
37. Of Utah’s 29 counties, 24 are classified as “rural” pursuant to Utah’s Rural County Grant Program (Utah Code Ann. § 17-54-102) and the recently amended county classification statute (Utah Code Ann. § 17-50-501, revised effective May 5, 2021) Utah’s 5 non-rural counties are: Salt Lake, Utah, Davis, Weber, and Washington.
38. The lists of top filers for Justice Court small claims and District Court debt claims are included in the Appendices below.
39. Small claims courts were developed as a way for people to seek justice without needing an attorney and without having to navigate complicated, technical legal and administrative requirements. Most people probably think of small claims court as a place to go if a friend or family member owes them money or if a neighbor has caused damage to their property. Increasingly, small claims are being brought not by natural persons, but by businesses, large and small.
40. In order to get a rough understanding of the types of debts being brought to small claims court, we utilized data from the Utah Department of Financial Institutions to match a plaintiff’s name with a specific lending type; because some plaintiffs engage in multiple types of lending activity, this method was not able to determine what type of lending activity was involved in a given case. However, we were able to determine that most small claims are being brought by financial institutions against individual consumers.
41. A “pro tem” judge is a practicing attorney working on a volunteer basis to hear cases in small claims court.
42. National Center for State Courts, “The Landscape of Civil Litigation in State Courts” (2015), [https://www.ncsc.org/data/assets/pdf\\_file/0020/13376/civiljusticereport-2015.pdf](https://www.ncsc.org/data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf) at v; see also Steele, Eric H. “The Historical Context of Small Claims Courts,” American Bar Foundation Research Journal, Spring, 1981, Vol. 6, No. 2 (Spring, 1981), pp. 293+295-376 (<https://www.jstor.org/stable/828089>).
43. KRS § 24A.230.
44. National Center for State Courts, “The Landscape of Civil Litigation in State Courts” (2015), [https://www.ncsc.org/data/assets/pdf\\_file/0020/13376/civiljusticereport-2015.pdf](https://www.ncsc.org/data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf) at 13.
45. At time of writing, H.B. 107 had received legislative approval and was awaiting the Governor’s signature, which would raise the small claims limit to \$15,000 on or after May 4, 2022, to \$20,000 on or after January 1, 2025, and to \$25,000 on or after January 1, 2030. <https://le.utah.gov/~2022/bills/static/HB0107.html>.
46. Small claims can also be brought to recover the costs of property damage (but not bodily injury) from motor vehicle accidents. Utah Code § 78A-8-102.
47. Utah Code § 78A-8-103.
48. <https://www.utcourts.gov/howto/smallclaims/#appeal>
49. Rule 10-1-305 of the Utah Code of Judicial Administration, which applies to the Third Judicial District, reads, in part, “(1) For appeals filed in locations where a program for mediating small claims appeals exists, the parties are required to mediate the dispute prior to the case being scheduled for pretrial or trial.” <https://www.utcourts.gov/rules/view.php?type=ucja&rule=10-1-305> At the time of writing, programs for mediating small claims appeals appear to exist in one location in Cache County (First Judicial District), one location in Weber County (Second Judicial District), and in several locations in Salt Lake County (Third Judicial District). If the parties make use of the Utah Dispute Resolution program prior to receiving a judgment in small claims court, this requirement is waived. There is currently no mediator’s fee associated with this program. <https://www.utahdisputeresolution.org/court-program>.
50. Discussed more fully below in “Case Outcomes.”
51. [https://www.utcourts.gov/howto/answer/docs/1013GE\\_Debt\\_Collection\\_Answer.pdf](https://www.utcourts.gov/howto/answer/docs/1013GE_Debt_Collection_Answer.pdf).
52. [https://www.utcourts.gov/howto/judgment/debt\\_collection/docs/1001DC\\_Debt\\_Collection\\_Complaint.pdf](https://www.utcourts.gov/howto/judgment/debt_collection/docs/1001DC_Debt_Collection_Complaint.pdf).

53. For example, on the Answer form, “Laches, estoppel, or unclean hands” is offered as number 16 on a list of 27 possible defenses. “Statute of Limitations” is offered as item number 26, the final option before “Other.” Both options have some element of the plaintiff waiting too long to bring the claim, but only the option of laches includes this plain language explanation. A defendant may select “laches” when the “Statute of Limitations” option is more appropriate.
54. Given the recent adoption of the complaint form, analysis of its impact falls outside the sample of our court docket data analysis.
55. [https://www.utcourts.gov/howto/filing/summons/docs/1017GE\\_Ten\\_Day\\_Summons.pdf](https://www.utcourts.gov/howto/filing/summons/docs/1017GE_Ten_Day_Summons.pdf)
56. *Id.*
57. <https://www.utcourts.gov/howto/answer/> Note that if a defendant is served via the Ten Day Summons, there may not be an opportunity for the defendant to file an answer until and unless the plaintiff files the complaint with the court, which must occur within 10 days of serving the complaint and summons on the defendant. So a defendant may functionally only have 10 days to submit the answer, wait to see if the answer is accepted or returned, and then make revisions and re-submit.
58. See footnote 53 above.
59. Information updated in the MyCase profile alone may not be reflected in other databases used by the courts. See: <https://www.utcourts.gov/mycase/>.
60. See Rule 8(d) of the Utah Rules of Civil Procedure.
61. See Rule 5 of the Utah Rules of Small Claims Procedure: <https://www.utcourts.gov/rules/view.php?type=srpe&rule=05>.
62. For debt claims, URCP Rule 26 governs; for evictions, URCP Rule 26.3 governs. See: <https://www.utcourts.gov/rules/view.php?type=urcp&rule=26> and <https://www.utcourts.gov/rules/view.php?type=urcp&rule=26.3>, respectively.
63. Rule 6 of Utah’s Rules of Small Claims Procedure do not permit formal discovery, but do encourage the parties to “exchange information” prior to hearing. See: <https://www.utcourts.gov/rules/view.php?type=srpe&rule=06>.
64. URCP Rule 26 requires disclosure of contact information for potential witnesses, names of each witness the plaintiff intends to use and a summary of their expected testimony, a copy of all documents that may be used as exhibits, a calculation of damages claimed and a copy of the documents or evidence used to make the calculation, a copy of any agreement regarding payment of judgment, and a copy of all documents that are referred to in the pleadings (complaint). If a plaintiff does not make these disclosures, then the evidence may not be used by the plaintiff to make their case unless they can show the court there was a good reason for not making the disclosures.
65. Of all cases filed, not of cases where the defendant answered.
66. Note: the researchers can make no representations as to the validity or quality of the documentation filed; it was only possible to see whether or not something was filed.
67. These data only show whether the documentation was filed with the court at the initiation of the lawsuit; the data do not capture whether a defendant received documentation from the plaintiff prior to or at a hearing, nor whether documentation was filed at a later date.
68. At time of writing.
69. See: <https://le.utah.gov/xcode/Title78A/Chapter8/78A-8-S102.html>.
70. See: <https://le.utah.gov/xcode/Title78A/Chapter8/78A-8-S103.html>.
71. The median monthly rent amount was determined by pulling a hand sample of 364 eviction cases filed in 2019.
72. Stakeholders noted that this number is likely attributable to the amount of rent due for the days that have elapsed between the end of the three day “pay or vacate” notice window and the filing of the action for unlawful detainer, and that, due to court practices around data entry, the amount of back-due rent that led to the posting of the “pay or vacate” notice is not reflected in the data.

73. Like Utah, California and Florida require three business days' notice (Cal. Civ. Proc. Code § 1161(2); Fla. Stat. Ann. § 83.56(3)). Kansas requires three days' notice, plus 2 days if notice is served by mail (Kan. Stat. Ann. § 58-2564(b)). See also: Idaho Code § 6-303(2); Iowa Code § 562A.27(2); Miss. Code Ann. §§ 89-7-27, 89-7-45; N.M. Stat. Ann. § 47-8-33(D); N.D. Cent. Code § 47-32-01; S.D. Codified Laws §§ 21-16-1(4), 21-16-2; Wyo. Stat. Ann. §§ 1-21-1002 to 1-21-1003; Mont. Code Ann. § 70-24-422(2).
74. [https://www.utcourts.gov/howto/landlord/docs/1001EV\\_3\\_Day\\_Notice\\_to\\_Pay\\_or\\_Vacate.pdf](https://www.utcourts.gov/howto/landlord/docs/1001EV_3_Day_Notice_to_Pay_or_Vacate.pdf).
75. <https://gardner.utah.edu/more-than-half-of-utahs-households-unable-to-afford-median-home-price-report-shows/>.
76. The landlord does have a duty to mitigate damages, such as by making reasonable attempts to lease the premises to a new occupant. See Utah Code Ann. § 78B-6-811; *Reid v. Mut. of Omaha Ins. Co.*, 776 P.2d 896, 1989 Utah LEXIS 55, 110 Utah Adv. Rep. 12.
77. For an explanation of treble damages, see “Treble Damages” inset above, p. 4.
78. Utah Code § 78B-6-802; <https://le.utah.gov/xcode/Title78B/Chapter6/78B-6-S802.html>.
79. 2020 Ut. HB 462, 2020 Utah Laws 329, 2020 Ut. Ch. 329, 2020 Ut. ALS 329, 2020 Ut. HB 462, 2020 Utah Laws 329, 2020 Ut. Ch. 329, 2020 Ut. ALS 329.
80. <https://www.deseret.com/utah/2022/1/31/22910742/how-much-is-rent-in-utah-texas-new-york-nyc-florida-average-home-price-redfin-apartment-association>
81. If the parties come to an agreement regarding repayment of a debt, they may ask the court to order a stipulated judgment. For cases filed in 2019 resulting in a stipulation or agreement, the court also recorded a judgment in 32% of District Court debt claims, 47% of small claims, and 19% of evictions.
82. Due to a small subset of cases with an agreement or stipulation that also result in a judgment, as well as rounding, the overall judgment rate can be slightly higher than the sum of default and non-default judgments shown in Fig. 9.
83. Another 14% of eviction cases resulted in a form of relief other than a money judgment, which may include an order of restitution.
84. Of cases filed in 2019, 3.6% of District Court debt claims, 16.8% of small claims, and 2.3% of evictions resulted in an amount in judgment that was less than the original amount in controversy. Because the data does not include information about cases settled out of court, it is not possible to compare settlement amounts to money judgment amounts nor to ascertain whether settlements include waiver of interest, fees, or other costs that would constitute the amount in controversy.
85. Different interest rates apply prior to and after a judgment has been entered. Court data revealed frequent errors in the rate of post-judgment interest applied to all three case types. This data is discussed in more detail under “Post-Judgment,” but is mentioned here as an additional confounding factor for someone trying to assess their potential costs in debt litigation.
86. Engaging with the court process is especially costly for defendants in eviction cases; this topic is explored below in relation to treble damages.
87. <https://www.utcourts.gov/resources/fees.htm>.
88. Because court data does not include the amounts agreed to in settlements nor does it include complete data on the amounts in stipulations, it is not currently possible to compare cost outcomes for defendants in cases with similar amounts in controversy that settle versus going through the court system.
89. We excluded from these calculations the cases that did not have a judgment amount entered at the time of analysis.
90. <https://www.utcourts.gov/resources/rules/urcp/view.html?title=Rule%2073%20Attorney%20fees.&rule=urcp073.html>.
91. Discussed in more detail below, under “The Current Attorney Fee Schedule Disincentivizes Defendants from Contesting Small-Dollar Debt Claims in District Court.”

92. See Footnote 23.
93. As discussed above under “District Court Is Being Used to Pursue Relatively Low-Dollar Claims.”
94. See, e.g., *Martin v. Kristensen*, 2021 UT 17, P29, 489 P.3d 198, 203-204 (affirming that a temporary possession order precludes a renter’s eviction but does not affect the availability of statutory remedies such as treble damages).
95. See Fig. 13.
96. <https://www.utcourts.gov/resources/rules/urcp/view.html?title=Rule%2073%20Attorney%20fees.&rule=urcp073.html>.
97. Per the 2018 Advisory Committee notes regarding a change in allowable attorney fees, the previous schedule of allowable amounts had been based on the amount of damages sought: <https://www.utcourts.gov/resources/rules/urcp/view.html?title=Rule%2073%20Attorney%20fees.&rule=urcp073.html>
98. Total debt claims filed over that time period = 151,908.
99. <https://www.utcourts.gov/resources/rules/urcp/view.html?title=Rule%2058B%20Satisfaction%20of%20judgment.&rule=urcp058b.html>.
100. UCRP 58B. If a plaintiff does not file the satisfaction of judgment, there is a process whereby the debtor-defendant can do so.
101. For a comparison of state limitations on garnishments, see the National Consumer Law Center’s “No Fresh Start 2021: Will States Let Debt Collectors Push Families into Poverty as Pandemic Protections Expire?” available in pdf format at: [https://www.nclc.org/images/pdf/debt\\_collection/Rpt\\_NFS\\_2021.pdf](https://www.nclc.org/images/pdf/debt_collection/Rpt_NFS_2021.pdf). The web version of the report is available here: <https://www.nclc.org/issues/no-fresh-start-in-2021.html>.
102. 15 USCS § 1673.
103. 15 USCS § 1674; *but see Cheatham v. Virginia Alcoholic Beverage Control Board*, 501 F.2d 1346, 1974 U.S. App. (4th Cir. Va. August 1, 1974) (holding that USC § 1674 applies to garnishments for “one indebtedness,” not multiple garnishments). Multiple debts for which there is a single judgment and court order for garnishment constitute “one indebtedness.”
104. Other limits apply where the garnishment is sought to satisfy an education loan or a debt for child support. See Utah Code Ann. §70C-7-103 and URCP 64D.
105. See Fig. 9.
106. Data on bankruptcy filings, and any relationship between debt litigation in Utah and bankruptcy, is beyond the scope of this project.
107. URCP 58B.
108. Current and historic post-judgment interest rates are available on the Utah Courts website here: <https://www.utcourts.gov/resources/intrates/interestrates.htm> and <https://www.utcourts.gov/resources/intrates/historic.html>.
109. See Utah Code §§15-1-1(2) “Interest Rates– Contracted Rate– Legal Rate” and 15-1-4(4) “Interest on Judgments”.
110. Utah Code Ann. § 78B-6-811.
111. Utah Code Ann. § 57-17-3.
112. [https://www.utcourts.gov/howto/filing/info\\_change/docs/Notice\\_of\\_Change\\_of\\_Address.pdf](https://www.utcourts.gov/howto/filing/info_change/docs/Notice_of_Change_of_Address.pdf).
113. UCRP 5. Per a 2015 Advisory Committee note, “electronically filing a document has the effect of serving the document on lawyers who have an e-filing account.” <https://www.utcourts.gov/rules/view.php?type=urcp&rule=5>
114. One case in the hand sample had the following fact pattern:

- The defendant, who had filed an answer, had already moved out on 1/11/2019, according to their answer. They allege (in their answer) that the Landlord had changed the locks (if true, this could be a self-help eviction and unlawful).
  - The plaintiff moved for a hearing, purporting to serve this motion on the defendants at the rental property, which the defendants had alleged they no longer had access to. Standing alone, these facts constitute an example of a case where a plaintiff served the defendant at an old address.
  - The hearing notice itself, however, was sent to an updated address, and therefore the defendants had a warning of the hearing date from the court.
115. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/28/fact-sheet-the-white-house-and-department-of-justice-announced-99-law-schools-in-35-states-and-puerto-rico-continue-to-answer-the-attorney-generals-call-to-action-for-stronger-access-to-just/>.
  116. <https://www.justice.gov/ag/page/file/1428626/download>.
  117. [https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program#:~:text=NCSC's%20Eviction%20Diversion%20Initiative%20\(EDI,%2C%20high%2Dimpact%20eviction%20dockets](https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program#:~:text=NCSC's%20Eviction%20Diversion%20Initiative%20(EDI,%2C%20high%2Dimpact%20eviction%20dockets).
  118. <https://perma.cc/V9LU-VD2D>.
  119. [https://ncsc.org/\\_data/assets/pdf\\_file/0022/71914/Eviction-diversion-whitepaper-Jan.pdf](https://ncsc.org/_data/assets/pdf_file/0022/71914/Eviction-diversion-whitepaper-Jan.pdf).
  120. See [https://www.ncsc.org/\\_data/assets/pdf\\_file/0027/25578/meeting-the-challenges.pdf](https://www.ncsc.org/_data/assets/pdf_file/0027/25578/meeting-the-challenges.pdf).
  121. See Fig. 9 “Case Outcomes Vary Across Case Types,” illustrating that District Court debt claims have a far higher rate of default judgments (71%) than small claims (29%).
  122. URCP 59.
  123. 2020 Ut. HB 462, 2020 Utah Laws 329, 2020 Ut. Ch. 329, 2020 Ut. ALS 329, 2020 Ut. HB 462, 2020 Utah Laws 329, 2020 Ut. Ch. 329, 2020 Ut. ALS 329.
  124. We used the Creative Research Systems sample size calculator: <https://www.surveysystem.com/sscalc.htm>.
  125. <https://www.google.com/url?q=https://www.utcourts.gov/alerts/docs/20200320%2520-%2520Pandemic%2520Administrative%2520Order.pdf&sa=D&source=docs&ust=1647470033626884&usg=AOvVaw1-3Jw4yUVdpoticmyD-Inl>.
  126. <https://caputah.org/what-we-do/advocacy/the-work-of-community-action-in-utah/>
  127. <https://caputah.org/who-we-are/>
  128. <https://www.utahca.org/housing/>



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