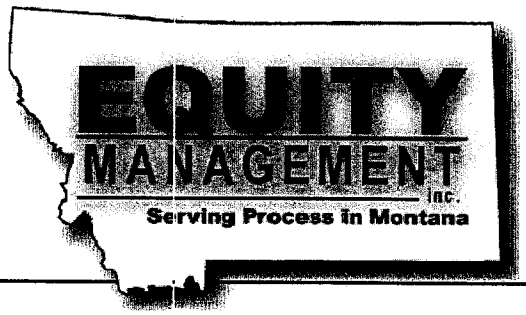
EXHIBIT 5
DATE 3/12/2013
SB 331



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TO: House Judiciary Committee
FROM: Lisa Mecklenberg Jackson, In-House Counsel for Equity Management
SB 331: Revising laws relating to process servers
DATE: March 12, 2013

Dear Representatives,

Thank you for the opportunity to share information with you regarding SB 331, Revising laws related to process servers. Below are some points I hope you will consider when looking at this bill.

- This legislation is modeled after already existing law in Washington and California and would benefit over 250 process servers in the State of Montana.
- Process servers in Montana are required to be registered, must pass an exam, and pay a yearly fee to the Board of Private Security regulated by the MT Dept. of Labor.
- Registered process servers have a picture ID they are required to carry when serving papers and are readily identifiable.
- Process servers are personally serving papers generated by a court. Courts use service of process to exercise jurisdiction over a person involved in a lawsuit.
- A process server is a disinterested third party in this process. Process servers act as messengers, serving as a conduit between the court and the litigant.
- The goal of serving papers is to give notice to the person served that a legal action is pending that requires his/her attention (and uphold the individual's Constitutional right to due process).
- A process server is defined as a public servant under MCA 25-3-105 and has a duty to execute process under MCA 25-3-202.
- In fact, failure to serve papers results in a misdemeanor for the server under MCA 25-3-201(3).
- A number of individuals thwart service of process by posting their property as no trespassing, thus not allowing process servers to enter the property to serve the court papers.
- Process servers attempting to execute service by going past a no trespassing sign often find themselves in dangerous situations with the landowner.
- In addition, as the law currently reads, a process server could be subject to civil liability and criminal trespassing charges for entering private property posted no trespassing.
- Montana's criminal trespass statute is located at MCA 45-6-203. There are several exceptions to trespassing built into Montana's criminal trespass statute. These exceptions include property valuation staff, professional land surveyors, and fire wardens.

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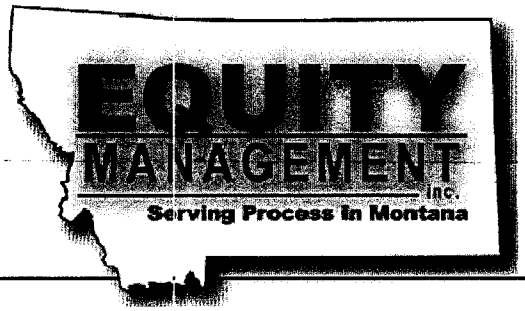

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- We are asking that process servers be added to the list of exceptions listed in MCA 45-6-203 in order to allow them to safely and effectively do their jobs and serve their legal papers, as mandated by the Montana court system.
- The bill also contains new language defining how a process server must enter private property in order to qualify for the exception to the criminal trespass statute. There are sideboards built into the new language. Access onto private property for process servers is for a reasonable period of time in order to execute service of process. A process server may not enter any structure on the property and entry onto private property must be reasonable and necessary to execute service.
- This bill would help clarify for law enforcement this issue of process servers entering property posted no trespassing. Currently, law enforcement and even county attorneys seem to have different interpretations as to whether a process server can enter property posted no trespassing in order to serve papers. This bill would make it clear to those charged with enforcing the law that process servers do have a right to enter the property and have certain protections when doing so.
- Process servers should not be prevented from fulfilling due process requirements, or carrying out their duty under Montana law, nor should they be subject to harassment, physical danger, and allegations of criminal trespass, merely for "delivering the message."
- Please consider adding process servers as an exception to Montana's criminal trespass statute so they might more effectively do their jobs.

This is a very important bill clarifying the responsibilities and safety of process servers in the State of Montana. I hope you will consider a do pass on SB 331. Thank you.