
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):

August 7, 2020

Arbor Realty Trust, Inc.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

MARYLAND

(STATE OF INCORPORATION)

001-32136

(COMMISSION FILE NUMBER)

20-0057959

(IRS EMPLOYER ID. NUMBER)

333 Earle Ovington Boulevard, Suite 900

Uniondale, New York

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

11553

(ZIP CODE)

(516) 506-4200

(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

Item 8.01 Other Events.

On August 7, 2020, Arbor Realty Trust, Inc., a Maryland corporation (the “Company”), Arbor Realty Limited Partnership, a Delaware limited partnership (“ARLP”) and JMP Securities LLC, as sales agent (the “Placement Agent”), entered into Amendment No. 3 (the “Amendment”) to the Equity Distribution Agreement, dated February 13, 2014, among the Company, ARLP and the Placement Agent, as amended on August 10, 2016 and August 2, 2019 (as amended, the “Equity Distribution Agreement”). In accordance with the terms of the Equity Distribution Agreement, the Company may offer and sell up to 10,000,000 shares (the “Securities”) of its common stock, par value \$0.01 per share (the “Common Stock”) from time to time in “at-the-market” offerings under the Company’s automatic shelf registration statement on Form S-3 (No. 333-242377). The Company filed a prospectus supplement, dated August 7, 2020 with the Securities and Exchange Commission in connection with the offer, issuance and sale of the Securities.

The sales, if any, of the Securities will be made through the Placement Agent acting as placement agent for the Company or directly to the Placement Agent acting as principal. Sales of Securities, if any, under the Equity Distribution Agreement may be made in negotiated transactions or transactions that are deemed to be “at the market” offerings as defined in Rule 415 under the Securities Act of 1933, including sales made directly on the New York Stock Exchange, the existing trading market for Common Stock, sales made to or through a market maker other than on an exchange or otherwise, in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices, and/or any other method permitted by law.

A copy of the Amendment is filed as Exhibit 1.1 hereto and is incorporated herein by reference. The legal opinion of Venable LLP relating to the legality of the Securities is attached as Exhibit 5.1 to this Current Report on Form 8-K.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

No.	Description
1.1	Amendment No. 3, dated August 7, 2020, to the Equity Distribution Agreement, dated February 13, 2014, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and JMP Securities LLC, as sales agent, as amended
5.1	Opinion of Venable LLP
23.1	Consent of Venable LLP (included in Exhibit 5.1)
104	The cover page of this Current Report on Form 8-K, formatted in Inline XBRL

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ARBOR REALTY TRUST, INC.

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

Date: August 7, 2020

ARBOR REALTY TRUST, INC.
AMENDMENT NO. 3 TO
EQUITY DISTRIBUTION AGREEMENT

August 7, 2020

JMP Securities LLC
600 Montgomery Street, Suite 1100
San Francisco, California 94111

Ladies and Gentlemen:

Reference is made to the Equity Distribution Agreement, dated February 13, 2014 (the "Original EDA"), between JMP Securities LLC ("JMP"), Arbor Realty Trust, Inc., a Maryland corporation (the "Company") and Arbor Realty Limited Partnership, a Delaware limited partnership (the "Operating Partnership"), as amended by Amendment No. 1 to the Equity Distribution Agreement ("Amendment No. 1"), dated August 10, 2016, between JMP, the Company and the Operating Partnership and Amendment No. 2 to the Equity Distribution Agreement, dated August 2, 2019, between JMP, the Company and the Operating Partnership (together with the Original EDA and Amendment No. 1, the "Agreement"), pursuant to which the Company agreed to sell through JMP as placement agent, up to 7,500,000 shares of common stock, par value \$0.01 per share, of the Company. All capitalized terms used in this Amendment No. 3 (this "Amendment") to the Agreement, between JMP, the Company and the Operating Partnership and not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. JMP, the Company and the Operating Partnership agree as follows:

A. Amendments to Agreement. The Agreement is amended as follows:

1. The first sentence of the first paragraph of Section 1 of the Agreement is hereby deleted and replaced with the following:

"The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through the Placement Agent, acting as agent and/or principal, up to 10,000,000 shares (the "Securities") of the Company's common stock, par value \$0.01 per share (the "Common Stock"). Such amount of Securities available for offer and sale are in addition to any offers and sales of Securities made prior to the date hereof under the Prospectus Supplement filed by the Company and effective on August 2, 2019."

2. The first sentence of the second paragraph of Section 1 of the Agreement is hereby deleted and replaced with the following:

"The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the "Securities Act"), with the Commission a registration statement on Form S-3 (File No. 333-242377), including a base prospectus, relating to certain securities, including the Securities to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the "Exchange Act")."

3. The second sentence of the second paragraph of Section 1 of the Agreement is hereby amended by deleting the words "(the "Prospectus Supplement")."

4. The fourth sentence of the second paragraph of Section 1 of the Agreement is hereby deleted and replaced with the following:

“Except where the context otherwise requires, “Registration Statement” as used herein, means the registration statement, as amended at the time of such registration statement’s effectiveness for purposes of Section 11 of the Act, as such section applies to the Placement Agent, and any subsequent registration statement filed by the Company to replace such Registration Statement upon its expiration pursuant to Rule 415(a)(5) and (6) under the Act, including (1) all documents filed as a part thereof or incorporated or deemed to be incorporated by reference therein and (2) any information contained or incorporated by reference in a prospectus filed with the Commission pursuant to Rule 424(b) under the Act, to the extent such information is deemed, pursuant to Rule 430B or Rule 430C under the Act, to be part of the registration statement at the effective time; and “Prospectus Supplement” as used herein, means the most recent prospectus supplement specifically relating to the Securities filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, in the form furnished by the Company to the Placement Agent in connection with the offering of the Securities.”

5. The second sentence of Section 5(a)(1) of the Agreement is hereby deleted and replaced with the following:

“The Registration Statement is an “automatic shelf registration statement” as defined under Rule 405 of the Securities Act that has been filed with the Commission not earlier than three years prior to the date hereof and no order preventing or suspending the use of any base prospectus, the Prospectus Supplement, the Prospectus or any Permitted Free Writing Prospectus (as defined below), or the effectiveness of the Registration Statement and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission, and any request on the part of the Commission for additional information has been complied with.”

6. The first sentence of Section 5(a)(14) of the Agreement is hereby deleted and replaced with the following:

“The authorized, issued and outstanding stock of the Company is as set forth in the Company’s quarterly report on Form 10-Q for the six months ended June 30, 2020.”

7. Section 5(a)(40) of the Agreement is hereby amended by deleting the words “December 31, 2014” in the penultimate sentence and replacing them with the words “December 31, 2020.”

8. The first sentence of Section 6(b) of the Agreement is hereby amended by deleting the words “third (3rd)” and replacing them with “second (2nd)”.

9. Section 7(p) of the Agreement is hereby amended by deleting the words “Allen & Overy LLP” and replacing them with “Debevoise & Plimpton LLP.”

10. Section 9(a) of the Agreement is hereby amended by deleting the words “Allen & Overy LLP” and replacing them with “Debevoise & Plimpton LLP.”

11. Schedule I to the Agreement is hereby deleted and replaced with the following:

Name	Jurisdiction of Organization	Type of Entity
Arbor Realty GPOP, Inc.	Delaware	Corporation
Arbor Realty Limited Partnership	Delaware	Limited Partnership (general partner is Arbor Realty GPOP, Inc.)
ARSR Holdings, LLC	Delaware	Limited Liability Company
Arbor Realty SR, Inc.	Maryland	Corporation
Arbor Realty Commercial Real Estate Notes 2017-FL2, Ltd.	Cayman Islands	Exempted Company with Limited Liability
Arbor Realty Commercial Real Estate Notes 2017-FL3 Ltd.	Cayman Islands	Exempted Company with Limited Liability
Arbor Realty Commercial Real Estate Notes 2018-FL1 Ltd.	Cayman Islands	Exempted Company with Limited Liability
Arbor Realty Commercial Real Estate Notes 2019-FL1 Ltd.	Cayman Islands	Exempted Company with Limited Liability
Arbor Realty Commercial Real Estate Notes 2019-FL2 Ltd.	Cayman Islands	Exempted Company with Limited Liability
Arbor Realty Commercial Real Estate Notes 2020-FL1 Ltd.	Cayman Islands	Exempted Company with Limited Liability
ARSR Alpine LLC	Delaware	Limited Liability Company (classified as a Corporation for tax purposes)
ARSR Private Label LLC	Delaware	Limited Liability Company (classified as a Corporation for tax purposes)

12. Schedule II to the Agreement is hereby deleted and replaced with the following:

Name	Jurisdiction of Organization	Type of Entity	Percentage Ownership
ATM 450 LLC	Delaware	Limited Liability Company	57.92%
AC Flushing, LLC	New York	Limited Liability Company	50%
Richland Terrace Apartments, LLC	South Carolina	Limited Liability Company	25%
ABT ESI, LLC	Delaware	Limited Liability Company	23.75%
420 Fifth Associates, LLC	Delaware	Limited Liability Company	80%
Legacy Equity Investments Group LLC	Delaware	Limited Liability Company	51.33%
PE 25 LLC	Delaware	Limited Liability Company	43.44%
AR Prime	Delaware	Limited Liability Company	66.67%
JT Prime	Delaware	Limited Liability Company	33.37%
WSC Investors, LLC	Delaware	Limited Liability Company	50%
Lexford Pools 1/3 LLC	Delaware	Limited Liability Company	49%
HHC II LLC	Delaware	Limited Liability Company	50%
78 Bowery Realty LLC	Delaware	Limited Liability Company	50%

13. The first sentence of the Form of Placement Notice attached as Exhibit A is amended to add the words “as amended on August 10, 2016, August 2, 2019 and August 7, 2020.”

14. The third sentence of the form of Officer Certificate attached as Exhibit G is amended to add the words “and August 7, 2020” immediately after “, as amended on August 10, 2016 and August 2, 2019.”

- B. Prospectus Supplement. The Company shall file a 424(b) Prospectus Supplement reflecting this Amendment within two Business Days of the date hereof.
- C. No Other Amendments. Except as set forth in Part A above, all the terms and provisions of the Sales Agreement shall continue in full force and effect.
- D. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Amendment by one party to the other may be made by facsimile or email transmission.
- E. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws.

[Remainder of page intentionally left blank.]

If the foregoing correctly sets forth the understanding between us, please so indicate in the space provided below for that purpose.

Very truly yours,

ARBOR REALTY TRUST, INC.

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

ARBOR REALTY LIMITED PARTNERSHIP

By: Arbor Realty GPOP, Inc., its General Partner

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

ACCEPTED as of the date first above written:

JMP SECURITIES LLC

By: /s/ Tosh Chandra

Name: Tosh Chandra

Title: Managing Director

August 7, 2020

Exhibit 5.1

Arbor Realty Trust, Inc.
333 Earle Ovington Boulevard, Suite 900
Uniondale, New York 11553

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have served as Maryland counsel to Arbor Realty Trust, Inc., a Maryland corporation (the "Company"), in connection with certain matters of Maryland law arising out of the sale and issuance of up to 10,000,000 shares (the "Shares") of common stock, \$0.01 par value per share (the "Common Stock"), of the Company, covered by the above-referenced Registration Statement, and all amendments related thereto (the "Registration Statement"), filed by the Company with the U.S. Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act"). The Shares are to be issued from time to time in at-the-market offerings pursuant to the Equity Distribution Agreement, dated as of February 13, 2014, by and between the Company, Arbor Realty Limited Partnership (the "OP") and JMP Securities LLC ("JMP"), as amended by that certain Amendment No. 1 to Equity Distribution Agreement, dated as of August 10, 2016, by and between the Company, the OP and JMP, Amendment No. 2 to Equity Distribution Agreement, dated as of August 2, 2019, by and between the Company, the OP and JMP and Amendment No. 3 to Equity Distribution Agreement, dated as of the date hereof (as amended, the "ED Agreement"), by and between the Company, the OP and JMP.

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the "Documents"):

1. The Registration Statement, in the form transmitted to the Commission under the 1933 Act;
 2. The Company's Prospectus, dated as of the date hereof, as supplemented by the Company's Prospectus Supplement, dated as of the date hereof, each in the form in which it was filed with the Commission pursuant to Rule 424(b) promulgated under the 1933 Act;
 3. The charter of the Company (the "Charter"), certified by the State Department of Assessments and Taxation of Maryland (the "SDAT");
 4. The Amended and Restated Bylaws of the Company, certified as of the date hereof by an officer of the Company;
 5. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;
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Arbor Realty Trust, Inc.
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6. Resolutions adopted by the Board of Directors of the Company (the "Resolutions"), authorizing the registration, sale and issuance of the Shares, certified as of the date hereof by an officer of the Company;
7. The ED Agreement;
8. A certificate executed by an officer of the Company, dated as of the date hereof; and
9. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.
 2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.
 3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.
 4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.
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5. The Shares will not be issued or transferred in violation of the restrictions on transfer and ownership of shares of stock of the Company set forth in Article VII of the Charter.

6. Upon the issuance of any Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Charter.

7. The number of Shares, and the offering price of each Share, to be issued by the Company from time to time pursuant to the ED Agreement will be determined by the Authorized Officers in accordance with the Resolutions and the ED Agreement (with such determinations referred to hereinafter as the "Officer Instructions") prior to the issuance thereof.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a corporation duly incorporated and existing under the laws of the State of Maryland and is in good standing with the SDAT.

2. The issuance of the Shares has been duly authorized and, when and if issued and delivered against payment therefor in accordance with the Officer Instructions, the Resolutions, the ED Agreement and the Registration Statement, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning federal law or any other state law. We express no opinion as to the applicability or effect of federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of any judicial decision which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

Arbor Realty Trust, Inc.

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This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the Offering (the "Current Report"). We hereby consent to the filing of this opinion as an exhibit to the Current Report and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,

/s/ Venable LLP
