

ARBOR REALTY TRUST INC

Form S-11/A

April 02, 2004

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As filed with the Securities and Exchange Commission on April 2, 2004

Registration No. 333-110472

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 5

to

FORM S-11

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Arbor Realty Trust, Inc.

(Exact Name of Registrant as Specified in its Governing Instruments)

333 Earle Ovington Boulevard

Suite 900

Uniondale, New York 11553

(516) 832-8002

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Frederick C. Herbst

Chief Financial Officer and Treasurer

Arbor Realty Trust, Inc.

333 Earle Ovington Boulevard

Suite 900

Uniondale, New York 11553

(516) 832-7408

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

David B. Goldschmidt

Fred White, III

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square

New York, New York 10036-6522

(212) 735-3000

Eric S. Haueter

James O. Connor

Sidley Austin Brown & Wood LLP

787 Seventh Avenue

New York, NY 10019

(212) 839-5300

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box.

CALCULATION OF REGISTRATION FEE

Title of Securities Being Registered	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.01 per share, being registered for sale by Arbor Realty Trust, Inc.	\$161,437,500 (1)(2)	
Common Stock, par value \$0.01 per share, being registered for sale by the selling stockholder(3)	\$ 472,500 (2)(3)	
Total	\$161,910,000(1)(2)	\$13,847.26(4)

(1) Includes shares that the underwriters have the option to purchase from us to cover over-allotments, if any.

(2) Estimated solely for the purpose of computing the registration fee in accordance with Rule 457(o) of the Securities Act of 1933, as amended.

(3) 22,500 shares of common stock are being registered for sale by the selling stockholder.

(4) Of this amount, \$11,670.23 was paid in connection with the initial filing of this registration statement on November 13, 2003 and \$727.90 was paid in connection with the filing of the registration statement on February 5, 2004.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission acting, pursuant to said Section 8(a), may determine.

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EXPLANATORY NOTE

This Registration Statement contains a prospectus for an underwritten offering of shares of our common stock, together with separate pages relating to a prospectus for a concurrent direct offering of our common stock to Kojaian Ventures LLC, of which the sole members are C. Michael Kojaian, one of our directors, and Kojaian Ventures MM, Inc., of which Mr. Kojaian is the sole stockholder. We will refer to Kojaian Ventures LLC as Kojaian. The complete prospectus for the underwritten offering of our common stock follows immediately. Following the prospectus for the underwritten offering are the alternate front and back pages for the prospectus relating to the direct offering of common stock to Kojaian.

The complete prospectus for each of the underwritten offering and the direct offering to Kojaian will be filed with the Securities and Exchange Commission in accordance with Rule 424 under the Securities Act of 1933.

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The information in this preliminary prospectus is not complete and may be changed or supplemented. These securities may not be sold until the registration statement with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS

SUBJECT TO COMPLETION, DATED APRIL 2, 2004

6,272,500 Shares

Arbor Realty Trust, Inc.

Common Stock

This is our initial public offering. We are offering 6,250,000 shares of our common stock and a selling stockholder is offering 22,500 shares of our common stock. We will not receive any proceeds from the sale of our common stock by the selling stockholder.

We expect the public offering price to be between \$19.00 and \$21.00 per share. Prior to this offering, there has been no public market for our common stock. Our common stock has been approved for listing, subject to notice of issuance, on the New York Stock Exchange under the symbol ABR.

Investing in our common stock involves risks. See Risk Factors beginning on page 19 for a discussion of these risks.

We have a limited operating history and may not operate successfully.

Historical consolidated financial statements included in this prospectus include expenses that would not have been incurred had we operated as a separate entity during the periods presented and exclude the management fees payable pursuant to the management agreement.

We are substantially controlled by Arbor Commercial Mortgage and its controlling equity owner, Mr. Kaufman.

We are dependent on our manager with whom we have conflicts of interest.

Our directors have approved very broad investment guidelines for our manager and do not approve each investment decision made by our manager.

We depend on key personnel with long standing business relationships, the loss of whom could threaten our ability to operate our business successfully.

We may be unable to generate sufficient revenue from operations to pay our operating expenses and to pay dividends to our stockholders.

We may need to borrow funds under our credit facilities in order to satisfy our REIT distribution requirements, and a portion of our distributions may constitute a return of capital. Debt service on any borrowings for this purpose will reduce our cash available for distribution.

Failure to maintain an exemption from the Investment Company Act would adversely affect our results of operations.

If Arbor Commercial Mortgage ceases to be our manager, the financial institutions providing our credit facilities may not provide future financing to us.

If we do not qualify as a REIT or fail to remain qualified as a REIT, we will be subject to tax as a regular corporation and could face substantial tax liability.

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Our charter generally does not permit ownership in excess of 9.6% of our common or capital stock, and attempts to acquire our capital stock in excess of these limits are ineffective without prior approval from our board of directors.

	Per Share	Total
	<hr/>	<hr/>
Public Offering Price	\$	\$
Underwriting Discount ⁽¹⁾	\$	\$
Proceeds, before expenses, to Arbor Realty Trust, Inc. ⁽¹⁾	\$	\$
Proceeds, before expenses, to a Selling Stockholder	\$	\$
<hr/>		

(1) See Underwriting Directed Shares for information with respect to shares that may be sold under the directed share program. Delivery of the shares of common stock will be made on or about _____, 2004.

We have granted the underwriters an option to purchase from us a maximum of 937,500 additional shares of our common stock to cover over-allotment of shares exercisable at any time until 30 days after the date of this prospectus.

Neither the Securities and Exchange Commission, any state securities commission, nor any other regulatory body has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Wachovia Securities

JMP Securities

UBS Investment Bank

The date of this prospectus is _____, 2004.

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You should rely only on the information contained in this prospectus. Neither we nor the underwriters have authorized anyone to provide you with different or additional information. This prospectus does not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this prospectus in any jurisdiction to or from any person to whom or from whom it is unlawful to make such offer or solicitation of an offer in such jurisdiction. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front cover of this prospectus. Neither the delivery of this prospectus nor any distribution of securities pursuant to this prospectus shall, under any circumstances, create any implication that there has been no change in the information set forth in this prospectus or in our affairs since the date of this prospectus.

Dealer Prospectus Delivery Obligations

Until _____, 2004, (25 days after the commencement of this offering), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This delivery is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to their unsold allotments or subscriptions.

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PROSPECTUS SUMMARY

This summary highlights information more fully described elsewhere in this prospectus and contains the material terms of this offering. However, you should read this entire prospectus carefully before deciding to invest in our common stock. Unless otherwise mentioned or unless the context otherwise requires, all references in this prospectus to (a) we, us, our, or similar references mean Arbor Realty Trust, Inc. and its subsidiaries, including Arbor Realty Limited Partnership, our operating partnership, and (b) Arbor Commercial Mortgage, or our manager means Arbor Commercial Mortgage, LLC.

Arbor Realty Trust, Inc.

We are a specialized real estate finance company investing in real estate-related bridge and mezzanine loans, preferred equity and, in limited cases, discounted mortgage notes and other real estate-related assets, which we collectively refer to as structured finance investments. We also invest in mortgage-related securities. Our objective is to maximize the difference between the yield on our investments and the cost of financing these investments to generate cash available for distribution, facilitate capital appreciation and maximize total return to our stockholders. We commenced operations in July 2003 and conduct substantially all of our operations through our operating partnership, Arbor Realty Limited Partnership. We intend to elect to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code and generally will not be subject to federal taxes on our income to the extent we distribute our income to our stockholders and maintain our qualification as a REIT.

We actively pursue lending and investment opportunities with property owners and developers who need interim financing until permanent financing can be obtained. Our structured finance investments generally have maturities of two to five years, depending on the type, have extension options when appropriate, and generally require a balloon payment of principal at maturity. Our financings typically range in size from \$1 million to \$30 million, with interest rates ranging from 4.00% to 7.00% over 30-day LIBOR for mezzanine financings and 3.00% to 6.00% over 30-day LIBOR for bridge financings. Borrowers in the market for these types of loans include owners or developers who seek either to acquire or refurbish real estate or pay down debt and reposition a property for permanent financing. Our investment program emphasizes the following categories of real estate-related activities:

Bridge Financing We offer bridge financing products to borrowers who are typically seeking short term capital to be used in an acquisition of property. The borrower has usually identified an undervalued asset that has been under-managed and/or is located in a recovering market. From the borrower's perspective, shorter term bridge financing is advantageous because it allows time to improve the property value through repositioning the property without encumbering it with restrictive long term debt. The bridge loans we make are predominantly secured by first mortgage liens on the property. Borrowers usually use the proceeds of a conventional mortgage loan to repay a bridge loan.

Mezzanine Financing We offer mezzanine loans, which are loans subordinate to a conventional first mortgage loan and senior to the borrower's equity in a transaction. Our mezzanine financing may take the form of loans secured by pledges of ownership interests in entities that directly or indirectly control the real property or subordinated loans secured by second mortgage liens on the property. We may also require additional collateral such as personal guarantees, letters of credit and/or additional collateral unrelated to the property.

Preferred Equity Investments We provide financing by making preferred equity investments in entities that directly or indirectly own real property. In cases where the terms of a first mortgage prohibit additional liens on the ownership entity, investments structured as preferred equity interests in the entity owning the property serve as viable financing substitutes. With preferred equity investments, we typically become a special limited partner or member in the ownership entity.

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Other Investments We may engage in other investment activities, including the purchase of discounted first lien mortgage notes from other lenders and opportunistic investments including the acquisition of properties. Typically, these transactions, which may be conducted through taxable subsidiaries, are analyzed with the expectation that, upon property repositioning or renovation, they will be sold to achieve a significant return on invested capital.

Mortgage-Related Securities We also invest in mortgage-related securities collateralized by pools of commercial or residential mortgage. The mortgage-related securities in which we intend to invest will be limited to whole pool certificates issued by governmental agencies such as the Government National Mortgage Association, or GNMA and government-sponsored entities such as the Federal Home Loan Mortgage Corporation, or FHLMC and the Federal National Mortgage Association, or FNMA, which represent all the certificates issued with respect to the underlying pool of mortgage loans. We refer to these investments as agency-sponsored whole loan pool certificates.

Currently, at least 55% of our assets consist of bridge loans, mortgage-related securities and loans secured by second mortgage liens on underlying properties.

We borrow against or leverage our investments to the extent consistent with our investment guidelines in order to increase the size of our portfolio and potential returns to our stockholders. We generate profits to the extent interest and fee income exceed interest expense, loan losses and operating expenses. We also generate profits from gains on investments.

We are externally managed and advised by Arbor Commercial Mortgage, LLC. Our manager is a national commercial real estate finance company operating through 15 offices in the United States, specializing in debt and equity financing for multi-family and commercial real estate. We believe Arbor Commercial Mortgage's experience and reputation positions it to originate attractive investment opportunities for us. Our management agreement with Arbor Commercial Mortgage was developed to capitalize on synergies with Arbor Commercial Mortgage's origination infrastructure, existing business relationships and management expertise.

Our manager has granted us a right of first refusal to pursue all structured finance investment opportunities identified by our manager and we have agreed not to pursue, and to allow our manager to pursue, any real estate opportunities other than structured finance transactions. This has historically included providing and servicing multi-family and commercial mortgage loans under Federal National Mortgage Association, or FNMA, Federal Housing Administration and conduit commercial lending programs, which we believe will offer customer relationship synergies to our business. Our portfolio currently contains loans and investments that we originated and loans and investments that we purchased from third parties or from affiliates. We may also pursue investments in mortgage-related securities.

We have a senior management team with significant industry experience. Mr. Ivan Kaufman, the chief executive officer of Arbor Commercial Mortgage, and Mr. Frederick Herbst, the chief financial officer of Arbor Commercial Mortgage, also serve as our chief executive officer and chief financial officer, respectively. Mr. Kaufman is the former co-founder and chairman of Arbor National Holdings, Inc.

As of December 31, 2003, our portfolio had an aggregate outstanding balance of \$323.5 million with a weighted average yield of 7.49%. This balance was comprised of \$158.8 million of bridge loans with a weighted average interest rate of 5.46%, \$129.3 million of mezzanine loans with a weighted average interest rate 10.04%, \$33.4 million of preferred equity investments with a weighted average yield of 7.33%, and \$2.0 million of other investments with a weighted average interest rate of 7.39%. Our borrowings against our portfolio at December 31, 2003 totaled \$172.5 million and had a weighted average interest rate of 3.40%.

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Our Business Strategy

We believe the financing of multi-family and commercial real estate offers significant growth opportunities that demand customized financing solutions.

Consolidation in the financial services industry has reduced the number of companies providing multi-family and commercial real estate financing products.

We believe this consolidation has led to a trend among remaining institutions to focus on larger, more standardized transactions.

The growth of a market for securitized commercial real estate pools has provided a new source of financing for real estate assets.

We believe we have the necessary levels of capital and financial flexibility to compete effectively in today's rapidly changing market. Our borrowers, who in the past relied on banks and life insurance companies as their primary source for commercial real estate financing, have benefited from our flexible underwriting standards. This flexibility has created significant demand for our bridge, mezzanine and other forms of innovative financing.

Our principal business objectives are to invest in bridge and mezzanine loans, preferred equity and other real estate-related assets and actively manage our portfolio in order to generate cash available for distribution, facilitate capital appreciation and maximize total return to our stockholders. We believe we can achieve these objectives through the following business and growth strategies:

Provide customized financing;

Focus on a niche market in smaller loan balances;

Execute transactions rapidly;

Manage and maintain credit quality;

Use Arbor Commercial Mortgage's relationships with existing borrowers and origination infrastructure;

Offer broader products and expand customer base; and

Leverage the experience of the executive officers and employees of Arbor Commercial Mortgage and us.

Our asset management group is integrated into the underwriting and structuring process for all transactions in order to enhance the credit quality of our originations before transactions close. We believe that after closing, our asset management group's experience in managing complex restructurings, refinancings and asset dispositions will help to improve the credit quality and yield on managed investments. We also believe our asset management group's involvement in our credit underwriting process helps to mitigate investment risk after the closing of a transaction.

Our Manager

Arbor Commercial Mortgage is a national commercial real estate finance company founded in 1993 as a subsidiary of Arbor National Holdings, Inc., an originator and servicer of single-family residential mortgage loans. Our chief executive officer, Mr. Ivan Kaufman, is also Arbor Commercial Mortgage's chief executive officer and its controlling equity owner, and was the co-founder, chairman and majority shareholder of Arbor National Holdings. Under Mr. Kaufman's direction, Arbor National Holdings grew to 25 branches in 11 states and funded more than \$4 billion in loans in its last full year of operations. Arbor National Holdings became a public company in 1992 and was sold to BankAmerica in 1995.

In connection with the sale of Arbor National Holdings, Mr. Kaufman purchased its commercial mortgage lending operations and the rights to the Arbor name and retained a significant portion of Arbor National Holdings' senior management team. This senior management team has guided Arbor Commercial Mortgage's growth from a company originally capitalized with approximately \$8 million of equity value to approximately \$64 million of equity value as of December 31, 2003, including its

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partnership interest in Arbor Realty Limited Partnership. Arbor Commercial Mortgage is now a full service provider of financial services to owners and developers of multi-family and commercial real estate properties. Arbor Commercial Mortgage has derived revenue from the origination for sale and servicing of government-sponsored and conduit mortgage loans for commercial and multi-family real estate properties as well as from the origination of structured finance loans and investments. Arbor Commercial Mortgage originated over \$800 million in government-sponsored and conduit mortgage loans in 2003. Arbor Commercial Mortgage originated over \$115 million in structured finance investments from the beginning of 2003 until the contribution of the majority of its structured finance portfolio to us in July 2003. Arbor Commercial Mortgage is currently servicing a portfolio with a principal balance of \$3.0 billion, including loans serviced for Arbor Realty Limited Partnership.

Our primary business will be investing in structured finance loans and investments. We do not intend to originate or service government-sponsored investment grade assets, but we may invest in such assets in the future.

Arbor Commercial Mortgage's executive officers and employees have extensive experience in originating and managing structured commercial real estate investments. The senior management team has an average of over 20 years experience in the financial services industry. Arbor Commercial Mortgage currently has 129 employees spread among its corporate headquarters in Uniondale, New York, 13 other sales offices located throughout the United States and the servicing administration office in Buffalo, New York.

We and our operating partnership have entered into a management agreement with Arbor Commercial Mortgage pursuant to which Arbor Commercial Mortgage has agreed to provide us with structured finance investment opportunities and loan servicing as well as other services necessary to operate our business.

We pay our manager an annual base management fee based on the equity of our operating partnership, as further discussed below. The amount of the base management fee does not depend on the performance of the services provided by our manager or the types of assets it selects for our investment, but the value of our operating partnership's equity will be affected by the performance of these assets. We also pay our manager incentive compensation each fiscal quarter. We have incurred \$587,734 in base management fees to Arbor Commercial Mortgage for management services rendered for the period from June 24, 2003 (inception) to December 31, 2003. As of December 31, 2003, we paid \$490,956 of these base management fees. We have incurred \$97,681 in base management fees for management services rendered in January 2004 and \$98,598 in base management fees for management services rendered in February 2004, for a total of \$196,278. All amounts incurred have been paid to date. Our manager did not earn incentive compensation for the quarters ended September 30, 2003 or December 31, 2003.

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The table summarizes the calculation of the base management fee, incentive compensation and other fees and expenses payable to our manager pursuant to the management agreement.

Type	Description and Method of Computation	Payable
Base management fee ⁽¹⁾	(1) 0.75% per annum of the first \$400 million of our operating partnership's equity, (2) 0.625% per annum of our operating partnership's equity between \$400 million and \$800 million, and (3) 0.50% per annum of our operating partnership's equity in excess of \$800 million.	Monthly in arrears in cash
Incentive compensation ⁽²⁾	(1) 25% of the amount by which: (a) our operating partnership's funds from operations per operating partnership unit, adjusted for certain gains and losses, exceeds (b) the product of (x) 9.5% per annum or the Ten Year U.S. Treasury Rate plus 3.5%, whichever is greater, and (y) the weighted average of the book value of the net assets contributed by Arbor Commercial Mortgage to our operating partnership per operating partnership unit, \$15.00 (representing the offering price per share of our common stock in	