ARBOR REALTY TRUST INC
Form 8-K
November 13, 2017

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):

November 7, 2017

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:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o 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 o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. o

Item 1.01 **Entry into a Material Definitive Agreement**

On November 13, 2017, Arbor Realty Trust, Inc., a Maryland corporation (the Company), completed the issuance and sale of $125.0 million aggregate principal amount of its 5.375% Convertible Senior Notes due 2020 (the Notes) pursuant to an underwriting agreement (the Underwriting Agreement) by and among the Company, Arbor Realty Limited Partnership, a Delaware limited partnership, and J.P. Morgan Securities LLC, as representative of the several underwriters named therein (the Underwriters), whereby the Company agreed to sell to the Underwriters and the Underwriters agreed to purchase from the Company, subject to and upon the terms and conditions set forth in the Underwriting Agreement, the Notes. In addition, the Company granted the Underwriters the right to purchase, exercisable within a 30-day period, up to an additional $18.75 million aggregate principal amount of the Notes solely to cover over-allotments.

The Notes will be senior unsecured obligations of the Company, bear interest at a rate equal to 5.375% per year, payable semiannually in arrears on May 15 and November 15 of each year, beginning on May 15, 2018 and will mature on November 15, 2020 (the Maturity Date), unless earlier converted or repurchased. The Company will not have the right to redeem the Notes prior to maturity and no sinking fund is provided for the Notes. The Notes will be convertible prior to August 15, 2020 upon the satisfaction of certain conditions and at any time on or after August 15, 2020 until the business day preceding the Maturity Date. The Company may settle conversions in cash, shares of the Company s common stock or a combination thereof, at the Company s election.

The conversion rate will initially equal 107.7122 shares of common stock per $1,000 principal amount of Notes, which is equivalent to an initial conversion price of approximately $9.28 per share of common stock, representing an approximate 10% conversion premium based on the closing price of the Company s common stock of $8.44 per share on November 7, 2017. The conversion rate will be subject to adjustment upon the occurrence of certain specified events. In addition, following certain corporate events that occur prior to the Maturity Date, the Company will increase the conversion rate for a holder who elects to convert its Notes in connection with such a corporate event in certain circumstances.

If the Company undergoes a fundamental change (as defined in the Supplemental Indenture (as defined below)), holders may require the Company to repurchase for cash all or any portion of their Notes at a fundamental change repurchase price equal to 100% of the principal amount of the Notes to be repurchased, *plus* accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

The net proceeds to the Company from the sale of the Notes, after deducting the Underwriters discounts and commissions and estimated offering expenses, are expected to be approximately $121.0 million (or approximately $139.2 million if the Underwriters over-allotment option is exercised in full). The Company intends to use the net proceeds of the offering to make investments relating to the Company s business and for general corporate purposes. The Company may also use a portion of the net proceeds from this offering to repay certain of the Company s indebtedness; however, the Company has no current commitments or obligations to do so.

The Notes were issued under the base indenture, dated as of May 12, 2014, between the Company and U.S. Bank National Association, as trustee (the Trustee), as supplemented by a third supplemental indenture (the Supplemental Indenture), dated as of November 13, 2017, between the Company and the Trustee with respect to the Notes.

The offer and sale of the Notes were registered with the Securities and Exchange Commission (the Commission) pursuant to a registration statement on Form S-3 (File No. 333-212554) under the Securities Act of 1933, as amended (the Securities Act). The material terms of the Notes are described in a prospectus supplement filed by the Company with the Commission dated November 7, 2017 pursuant to Rule 424(b)(5) under the Securities Act.

2

Copies of the Underwriting Agreement, the Supplemental Indenture and the form of the Notes are attached hereto as Exhibit 1.1, Exhibit 4.1 and Exhibit 4.2, respectively, and are incorporated herein by reference. The foregoing summaries do not purport to be complete and are qualified in their entirety by reference to the Underwriting Agreement, the Supplemental Indenture and the form of the Notes. The legal opinions of Skadden, Arps, Slate, Meagher & Flom LLP and Venable LLP relating to the legality of the Notes are attached as Exhibit 5.1 and Exhibit 5.2, respectively, to this Current Report on Form 8-K.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth in Item 1.01 is incorporated herein by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits

(d) *Exhibits*

Exhibit Number	Exhibit
1.1	Underwriting Agreement, dated November 7, 2017, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and J.P. Morgan Securities LLC, as the representative of the several underwriters named therein
4.1	Third Supplemental Indenture, dated as of November 13, 2017, between Arbor Realty Trust, Inc. and U.S. Bank National Association, as trustee
4.2	Form of 5.375% Convertible Senior Notes due 2020 (attached as Exhibit A to the Third Supplemental Indenture filed as Exhibit 4.1 hereto)
5.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP with respect to the legality of the Notes
5.2	Opinion of Venable LLP with respect to the legality of the shares of common stock underlying the Notes
8.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP with respect to certain tax matters
12.1	Computation of Ratios of Earnings to Fixed Charges
23.1	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1)
23.2	Consent of Venable LLP (included in Exhibit 5.2)

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: November 13, 2017