

AVALONBAY COMMUNITIES INC  
Form S-8  
May 22, 2009

As filed with the Securities and Exchange Commission on May 22, 2009

Registration Statement No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

**FORM S-8**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**AVALONBAY COMMUNITIES, INC.**

(Exact Name of Registrant as Specified in Its Charter)

<b>Maryland</b>	<b>2900 Eisenhower Avenue, Suite 300</b>	
(State of Incorporation)	<b>Alexandria, Virginia 22314</b>	
	<b>(703) 329-6300</b>	<b>77-0404318</b>
	(Address of Principal Executive Offices)	(I.R.S. Employer Identification No.)

**AvalonBay Communities, Inc. 2009 Stock Option and Incentive Plan**

(Full Title of the Plan)

**Bryce Blair**

**Chairman of the Board and Chief Executive Officer**

**AvalonBay Communities, Inc.**

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2900 Eisenhower Avenue, Suite 300

Alexandria, Virginia 22314

(Name and address of agent for service)

(703) 329-6300

(Telephone number, including area code, of agent for service)

**With copy to:**

**Gilbert G. Menna, Esq.**

Goodwin Procter LLP

Exchange Place

Boston, Massachusetts 02109-2881

(617) 570-1000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed Maximum Offering Price Per Share (2)</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee (3)</b>
Common Stock, par value \$.01 per share	2,930,000	\$ 54.28	\$ 159,040,400	\$ 8,874.45
(1)	This registration statement also relates to such indeterminate number of additional shares of the registrant's Common Stock as may be required pursuant to the anti-dilution provisions of the 2009 Stock Option and Incentive Plan in the event of a stock dividend, stock split, split-up, recapitalization, forfeiture of stock under the plan or other similar event.			
(2)	Calculated pursuant to Rule 457(h) under the Securities Act of 1933, based on the average of the high and low prices for the Common Stock reported on the New York Stock Exchange on May 15, 2009.			
(3)	In accordance with Rule 457(h), the filing fee is based on the maximum number of the registrant's securities issuable under the 2009 Stock Option and Incentive Plan that are covered by this registration statement.			



**PART I**  
**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The information required in Part I of this Registration Statement is included in the prospectus for the 2009 Stock Option and Incentive Plan, which the Registrant has excluded from this Registration Statement in accordance with the instructions to Form S-8.

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The Registrant hereby incorporates by reference the following documents which have previously been filed with the Securities and Exchange Commission (the Commission) under the Securities Exchange Act of 1934:

- Annual Report on Form 10-K for the year ended December 31, 2008 filed on March 2, 2009;
- Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2009 filed on May 11, 2009;
- Current Reports on Form 8-K filed on January 9, 2009, January 22, 2009, January 30, 2009 and April 14, 2009; and
- the description of the AvalonBay Communities, Inc. common stock in AvalonBay Communities, Inc.'s Registration Statement on Form 8-B filed on June 8, 1995.

In addition, all documents subsequently filed with the Commission by the Registrant pursuant to Sections 13(a) and 13(c), Section 14 and Section 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment that indicates that all securities offered hereunder have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of such documents (in each case, other than information in such documents that is deemed not to be filed).

**Item 6. Indemnification of Directors and Officers.**

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Subject to certain limited exceptions, AvalonBay's charter and bylaws, each as amended, limit the liability of AvalonBay's directors and officers to AvalonBay and its stockholders for money damages for any breach of any duty owed by such director or officer of AvalonBay to the fullest extent permitted by Maryland law. The Maryland General Corporation Law ( MGCL ) generally permits the liability of directors and officers to a corporation or its stockholders for money damages to be limited, unless it is established that (A) the director or officer actually received an improper personal benefit in money, property or services; (B) in the case of a criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful; or (C) the director's or officer's act or omission was material to the matter giving rise to the proceeding and either was committed in bad faith or was the result of active and deliberate dishonesty. However, if the proceeding was one by or in the right of AvalonBay, indemnification may not be made in respect of any proceeding in which the director or officer shall have been adjudged to be liable to AvalonBay. These provisions do not limit the ability of AvalonBay or its stockholders to obtain other relief, such as an injunction or rescission.

Pursuant to the authority granted in AvalonBay's charter and bylaws, AvalonBay has also entered into indemnification agreements with certain of its executive officers and members of the board of directors who are not officers of AvalonBay, pursuant to which AvalonBay has agreed to indemnify them against certain liabilities incurred in connection with their service as executive officers and/or directors and has agreed to advance expenses incurred by them in certain circumstances. These provisions and contracts could reduce the legal remedies available to AvalonBay and its stockholders against these individuals. In addition, AvalonBay maintains a directors' and officers' liability insurance policy.

**Item 8. Exhibits.**

Exhibit No.	Description
5.1	Opinion of Goodwin Procter LLP, as to the legality of the securities being registered.*
10.1	Form of Incentive Stock Option Agreement*
10.2	Form of Non-Qualified Stock Option Agreement*
10.3	Form of Stock Grant and Restricted Stock Agreement*
10.4	Form of Director Restricted Stock Agreement*
10.5	Form of Director Restricted Unit Agreement*
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.*
23.2	Consent of Goodwin Procter LLP (included in Exhibit 5.1 hereto).
24.1	Powers of Attorney (included in Part II of this Registration Statement).

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\* Filed herewith.

**Item 9. Undertakings.**

(a) The registrant hereby undertakes:

(1) To file, during any period in which offers are being made, a post-effective amendment to this registration statement to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and

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(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be

deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Alexandria, Commonwealth of Virginia, on this 22nd day of May, 2009.

AVALONBAY COMMUNITIES, INC.

By: /s/ Bryce Blair  
 Bryce Blair  
 Chairman of the Board and Chief Executive Officer

KNOW ALL BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints each of Bryce Blair and Thomas J. Sargeant as such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments and (and any additional registration statement related thereto permitted by Rule 462(b) promulgated under the Securities Act of 1933, and all further amendments, including post-effective amendments thereto) to this Registration Statement, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that any said attorney-in-fact and agent, or any substitute or substitutes of any of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Bryce Blair Bryce Blair	Chairman of the Board and Chief Executive Officer (Principal Executive Officer) and Director	May 22, 2009
/s/ Bruce A. Choate Bruce A. Choate	Director	May 22, 2009
/s/ John J. Healy, Jr. John J. Healy, Jr.	Director	May 22, 2009
/s/ Gilbert M. Meyer Gilbert M. Meyer	Director	May 22, 2009
/s/ Timothy J. Naughton Timothy J. Naughton	President and Director	May 22, 2009
/s/ Lance R. Primis Lance R. Primis	Director	May 22, 2009

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/s/ Peter S. Rummell  
Peter S. Rummell

Director

May 22, 2009

/s/ H. Jay Sarles H. Jay Sarles	Director	May 22, 2009
/s/ W. Edward Walter W. Edward Walter	Director	May 22, 2009
/s/ Thomas J. Sargeant Thomas J. Sargeant	Chief Financial Officer (Principal Financial and Accounting Officer)	May 22, 2009

**EXHIBIT INDEX**

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