

PREFERRED APARTMENT COMMUNITIES INC
Form POS AM
April 13, 2012

As filed with the Securities and Exchange Commission on April 13, 2012

Registration No. 333-176604

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

**Pre-Effective Amendment No. 1 to
Post-Effective Amendment No. 2 to
Form S-11
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933 OF
SECURITIES OF CERTAIN REAL ESTATE COMPANIES**

PREFERRED APARTMENT COMMUNITIES, INC.

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

**3625 Cumberland Boulevard, Suite 400
Atlanta, Georgia 30339
(770) 818-4100**

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

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PREFERRED APARTMENT COMMUNITIES, INC.
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(770) 818-4100

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

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the Securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box. x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) 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. o

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. o

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. o

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

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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. (Check one):

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

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 Commission, acting pursuant to said Section 8(a), may determine.

This Post-Effective Amendment No. 2 consists of the following:

Supplement No. 1, dated April 13, 2012, included herewith, which will be delivered as an unattached document along with the Registrant's Prospectus referred to below;
Registrant's Prospectus, dated November 18, 2011, previously filed pursuant to Rule 424(b)(3) on November 18, 2011 and included herewith;

Part II to this Post-Effective Amendment No. 2, included herewith; and
Signatures, included herewith.

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PREFERRED APARTMENT COMMUNITIES, INC.

**SUPPLEMENT NO. 1, DATED APRIL 13, 2012,
TO THE PROSPECTUS, DATED NOVEMBER 18, 2011**

This prospectus supplement (this Supplement No. 1) is part of the prospectus of Preferred Apartment Communities, Inc. (the Company), dated November 18, 2011 (the Prospectus). This Supplement No. 1 should be read, and will be delivered, with the Prospectus.

The purpose of this Supplement No. 1 is to:

disclose updated operating information, including the status of the offering, the Units currently available for sale, the status of distributions, the status of fees paid to the Company's manager, and the Company's real estate investment summary;

revise disclosure relating to the subscription procedures, including the elimination of the escrowing of money for settlements through the Depository Trust Company with respect to subscriptions for the Units;

update the number of shares authorized under the Company's charter;

update the time up to which the warrants may be exercised;

disclose the Company's entrance into an amended and restated warrant agreement;

update information with respect to the Company's directors disclosed in its charter;

update certain information with respect to the agreement of limited partnership of the Company's operating partnership;

update certain information with respect to sales of Units to investors whose contracts for investment advisory and related brokerage services include a fixed or wrap fee feature;

update Appendix B form of Subscription Agreement; and

add Appendix C form of Depository Trust Company Settlement Subscription Agreement.

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We commenced our reasonable best efforts public offering of up to 150,000 Units, with each Unit consisting of one share of Series A Redeemable Preferred Stock and one detachable warrant to purchase 20 shares of the our Common Stock, on November 18, 2011. On March 30, 2012, we satisfied the escrow conditions of our public offering. On such date, we received and accepted aggregate subscriptions in excess of \$2.0 million and issued 2,155 shares of Series A Redeemable Preferred Stock and 2,155 warrants to our new Series A Redeemable Preferred Stock stockholders.

We will offer Units until December 31, 2012, which may be extended through December 31, 2013, in our sole discretion, provided that the offering will be terminated if all the 150,000 Units are sold before such date.

On April 12, 2012, the last reported sale price of our common stock on the NYSE AMEX was \$7.89 per share.

Units Currently Available for Sale

As of April 13, 2012, there were 2,155 shares of Series A Redeemable Preferred Stock and 2,155 warrants outstanding. As of April 13, 2012, there were 147,845 shares of Series A Redeemable Preferred Stock and 147,845 warrants available for sale.

Status of Distributions

In order to obtain and maintain our status as a real estate investment trust for U.S. federal income tax purposes, or REIT, we must comply with a number of organizational and operating requirements, including a requirement to distribute 90% of our annual REIT taxable income to our stockholders. As a REIT, we generally will not be subject to federal income taxes on the taxable income we distribute to our stockholders. Generally, our objective is to meet our short-term liquidity requirement of funding the payment of our quarterly Common Stock dividends to stockholders through net cash generated from operating results, as well as monthly dividends to holders of our Series A Redeemable Preferred Stock.

For the 12-month period ended December 31, 2011, our dividend activity was:

Declaration date	Dividend per share of Common Stock	Record date	Payment date	Total amount paid
5/5/2011	\$ 0.125	6/30/2011	7/15/2011	\$ 646,487
8/4/2011	0.125	9/30/2011	10/17/2011	646,675
11/10/2011	0.125	12/30/2011	1/17/2012	646,916
	\$ 0.375			\$ 1,940,078

On February 2, 2012, our board of directors approved, and we declared, a quarterly common stock dividend of \$0.13 per share, an increase of 4% from the previous quarter, payable on April 16, 2012 to stockholders of record on March 30, 2012. For the remainder of 2012, we currently expect to maintain a quarterly dividend payment to holders of our Common Stock of \$0.13 per share. On April 13, 2012, our board of directors approved, and we declared, a dividend of

\$5.33 per share of Series A Redeemable Preferred Stock payable to stockholders of record on April 30, 2012. To the extent we continue to pay dividends at these rates, we expect to use cash available for distribution, or CAD, to fund the dividend payments our stockholders. If CAD is not sufficient to meet our anticipated dividend payment rates, we would need to use our working capital and dividend reserve to fund dividend payments. Our board of directors will review the common stock dividend quarterly, and there can be no assurance that the current common stock dividend level will be maintained. Dividends can be paid as a combination of cash and stock in order to satisfy the annual distribution requirements applicable to REITs. We believe that CAD will be sufficient to meet the dividend requirements necessary to maintain our REIT status under the Internal Revenue Code of 1986, as amended.

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Status of Fees Paid

Through April 10, 2012, we have incurred approximately \$1.6 million for organization and offering expenses related to our offering of Units and for the year to date through March 31, 2012, we have paid our manager approximately \$100,000 for property management fees, \$128,000 for asset management fees, and \$53,000 for general and administrative fees.

Real Estate Investment Summary

As of the date of this Supplement No. 1, we have not made any additional real estate investments not disclosed in the Prospectus.

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PROSPECTUS UPDATES

Settlement Methods; Escrow Changes

The following disclosure replaces in its entirety the penultimate paragraph on the cover page of the Prospectus.

We will sell Units through the following settlement methods: Direct Registration System settlement, or DRS Settlement; or Depository Trust Company, or DTC, settlement, or DTC Settlement. We will deposit all subscription agreements and, in connection with DRS Settlement subscriptions only, subscription payments which will be held in trust for the subscriber's benefit pending release to us as described herein, in an escrow account held by the escrow agent, UMB Bank N.A. Subscription payments for the sale of Units through DTC Settlement will not be held in escrow; instead, such subscription payments will be made by delivery on the closing date for the purchase of such Units by the subscriber in connection with delivery versus payment transactions processed by our dealer manager and the subscriber's registered representative.

Secondary Investment Strategy

The following disclosure replaces in its entirety the following sentences in the Prospectus: (i) the third sentence in the first paragraph under the section entitled Prospectus Summary Our Company on page 1 of the Prospectus; (ii) the second sentence in the first paragraph under the section entitled Management's Discussion and Analysis of Financial Condition and Results of Operation Overview on page 74 of the Prospectus; (iii) the third sentence in the first paragraph under the section entitled Business Our Company on page 95 of the Prospectus; (iv) the fourth sentence in the first paragraph under note 1 to the Notes to Consolidated Financial Statements, September 30, 2011, on page F-6 of the Prospectus; and (v) the third sentence in the second paragraph under note 1 to the Notes to Unaudited Pro Forma Consolidated Statements of Operations on page F-35 of the Prospectus.

As a secondary strategy, we also may acquire senior mortgage loans, subordinate loans or mezzanine debt secured by interests in multifamily properties, membership or partnership interests in multifamily properties and other multifamily related assets and invest not more than 10% of our total assets in other real estate related investments, as determined by our manager as appropriate for us.

Description of Securities

The following disclosure replaces the first sentence of the second paragraph under the section entitled Description of Securities General on page 151 of the Prospectus.

Our charter authorizes us to issue up to 400,066,666 shares of common stock, \$0.01 par value per share, and 15,000,000 shares of undesignated preferred stock, \$0.01 par value per share.

The following disclosure replaces the first three paragraphs under the section entitled Description of Securities Common Stock Warrants on page 155 of the Prospectus.

The following is a brief summary of the Warrants and is subject to, and qualified in its entirety by, the terms set forth in the amended and restated warrant agreement and global warrant certificate filed with the SEC as exhibits to the registration statement, of which this prospectus is a part.

Amended and Restated Warrant Agreement. The Warrants to be issued in this offering will be governed by an amended and restated warrant agreement, or the Warrant Agreement, between us and Computershare Trust Company, N.A., as agent for our company in respect of the Warrants. The Warrants shall be issued by book-entry only form to the DTC and evidenced by one or more global warrants. Those investors who own beneficial interests in a global warrant do so through participants in DTC's system, and the rights of these indirect owners will be governed solely by the applicable procedures of DTC and its participants. The Warrants may be exercised by notifying a broker who is a DTC participant prior to the expiration of such Warrants and providing payment of the exercise price for the shares of our common stock for which such warrants are being exercised. The foregoing description of the terms of the Warrant Agreement is subject to the detailed provisions of the Warrant Agreement.

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Exercisability. Holders may exercise the Warrants at any time beginning one year from the date of issuance up to 5:00 p.m., New York time, on the date that is four years after the date of issuance. The Warrants are exercisable, at the option of each holder, in whole, but not in part, by delivering to us a duly executed exercise notice accompanied by payment in full for the number of shares of our common stock purchased upon such exercise (except in the case of a cashless exercise in the circumstances discussed below). Each Warrant is exercisable for 20 shares of our common stock (subject to adjustment, as discussed below). The holder of Warrants does not have the right to exercise any portion of the Warrant if the holder would beneficially own in excess of 9.8% in value of the shares of our capital stock outstanding or in excess of 9.8% (in value or number of shares, whichever is more restrictive) of the shares of our common stock outstanding immediately after giving effect to such exercise.

Summary of Our Organizational Documents

The following disclosure replaces the first paragraph under the section entitled Summary of Our Organizational Documents Board of Directors on page 164 of the Prospectus.

Under our organizational documents, we must have at least two but not more than ten directors. A director may resign at any time. A director may be removed from office with or without cause by the affirmative vote of the holders of not less than 66-2/3% of the total voting power of all outstanding common stock of the Company. A vacancy on the board caused by the death, removal or resignation of a director or by an increase in the number of directors, within the limits described above, may be filled by the vote of a majority of the remaining directors whether or not the voting directors constitute a quorum.

Summary of Our Operating Partnership Agreement

The following disclosure replaces the third paragraph under the section entitled Summary of Our Partnership Agreement Description of Partnership Units Limited Partnership Units Generally beginning on page 168 of the Prospectus.

Distributions on the Series A Redeemable Preferred Units, each Class A Unit and each Class B Unit (and GP Unit) are as set forth in the operating partnership agreement. See the section entitled Distributions below for a detailed discussion on this subject. In addition, a portion of the items of income, gain, loss and deduction of the operating partnership for U.S. federal income tax purposes may be allocated to a limited partnership unit, regardless of whether any distributions are made by the operating partnership. See the section entitled Material U.S. Federal Income Tax Considerations Tax Aspects of Investments in Partnerships included elsewhere in this prospectus for a description of the manner in which income, gain, loss and deductions are allocated under the operating partnership agreement. As general partner, we may amend the allocation and distribution sections of the operating partnership agreement to reflect the issuance of additional units and classes of units without the consent of the limited partners.

The following disclosure replaces the fourth paragraph under the section entitled Summary of Our Partnership Agreement Distributions on page 174 of the Prospectus.

The return calculation described above applies to all distributions received and not just distributions of net sale proceeds. Achievement of a particular threshold, therefore, is determined with reference to all prior distributions made by our operating partnership to any limited partners, and to us, which we may then distribute to our stockholders.

The following disclosure replaces the second bullet point of the second paragraph under the section entitled Summary of Our Partnership Agreement Allocations on page 174 of the Prospectus.

thereafter, in such a manner that the capital accounts of each partner, immediately after making such allocation, is, as nearly as possible, equal proportionately to (i) the distributions that would be made to such partner if the operating partnership were dissolved, its affairs wound up and its assets were sold for cash, all operating partnership liabilities were satisfied, and the net assets of the operating partnership were distributed to the partners immediately after making such allocation, minus (ii) such partner's share of partnership minimum gain, partner nonrecourse debt minimum gain and any amount the partner would be required to contribute to partnership capital, all computed immediately prior to such hypothetical sale of assets.

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Plan of Distribution

The following disclosure replaces in its entirety the third paragraph under the section entitled Plan of Distribution General on page 203 of the Prospectus.

We will sell Units through the following settlement methods: DRS Settlement; or DTC Settlement. We will deposit all subscription agreements and, in connection with DRS Settlement subscriptions only, subscription payments which will be held in trust for the subscriber's benefit pending release to us as described herein, in an escrow account held by the escrow agent, UMB Bank N.A. Subscription payments for the sale of Units through DTC Settlement will not be held in escrow; instead, such subscription payments will be made by delivery on the closing date for the purchase of such Units by the subscriber in connection with delivery versus payment transactions processed by our dealer manager and the subscriber's registered representative. See Subscription Procedures for a description of the subscription procedures with respect to each of these settlement methods.

The following disclosure is added as a new paragraph at the end of the section entitled Plan of Distribution Compensation of Dealer Manager and Participating Broker-Dealers on page 204 of the Prospectus.

We will not pay any selling commissions, but will pay dealer manager fees, in connection with the sale of Units to investors whose contracts for investment advisory and related brokerage services include a fixed or wrap fee feature. Investors may agree with their participating brokers to reduce the amount of selling commissions payable with respect to the sale of their Units down to zero (i) if the investor has engaged the services of a registered investment advisor or other financial advisor who will be paid compensation for investment advisory services or other financial or investment advice, or (ii) if the investor is investing through a bank trust account with respect to which the investor has delegated the decision-making authority for investments made through the account to a bank trust department. The net proceeds to us will not be affected by reducing the commissions payable in connection with such sales. Neither our dealer manager nor its affiliates will directly or indirectly compensate any person engaged as an investment advisor or a bank trust department by a potential investor as an inducement for such investment advisor or bank trust department to advise favorably for an investment in Units.

The following disclosure replaces in its entirety the disclosure under the heading Plan of Distribution Subscription Procedures on page 205 of the Prospectus.

Subscription Procedures

You have the option to decide whether to use DRS Settlement or DTC Settlement to purchase Units in this offering. If you elect to use DRS Settlement, you should complete and sign the Direct Registration System Settlement Subscription Agreement similar to the one incorporated in this prospectus as Appendix B, which is available from your registered representative and which will be delivered to the escrow agent. In connection with a DRS Settlement subscription, you should pay the full purchase price of the Units to the escrow agent as set forth in the subscription agreement. Subscribers may not withdraw funds from the escrow account. If you elect to use DTC Settlement, you can: (i) complete and sign the Depository Trust Company Settlement Subscription Agreement similar to the one incorporated in this prospectus as Appendix C, which is available from your registered representative and which will be delivered to the escrow agent; or (ii) place an order for the purchase of Units through your registered representative. In connection with a DTC Settlement, you should coordinate with your registered representative to pay the full purchase price of the Units. Subscriptions will be effective upon our acceptance, and we reserve the right to reject any subscription in whole or in part. **Irrespective of whether you subscribe for Units using DRS Settlement or DTC Settlement, by accepting Units you will be deemed to have accepted the terms of our charter.**

Subject to compliance with Rule 15c2-4 of the Exchange Act, in connection with DRS Settlement subscriptions, our dealer manager or the broker-dealers participating in the offering promptly will deposit any checks received from subscribers in an escrow account maintained by UMB Bank N.A. on the next business day following receipt of the subscriber's subscription documents and check. In certain circumstances where the subscription review procedures are more lengthy than customary or pursuant to a participating broker-dealer's internal supervising review procedures, a subscriber's check will be transmitted by the end of

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the next business day following receipt by the review office of the dealer, which will then be promptly deposited by the end of the next business day following receipt by the review office. Any subscription payments received by the escrow agent will be deposited into a special non-interest bearing account in our name until such time as we have accepted or rejected the subscription and will be held in trust for your benefit, pending our acceptance of your subscription. Subscriptions will be accepted or rejected within 10 business days of receipt by us and, if rejected, all funds shall be returned to the rejected subscribers within 10 business days. If accepted, the funds will be transferred into our general account on our next closing date. You will receive a confirmation of your purchase. We generally will admit stockholders on a monthly basis.

Subscription payments for the sale of Units through DTC Settlement will not be held in escrow; instead, such subscription payments will be made by delivery on the closing date for the purchase of such Units by the subscriber in connection with delivery versus payment transactions processed by our dealer manager and the subscriber's registered representative.

Each participating dealer who sells shares on our behalf has the responsibility to make every reasonable effort to determine that the purchase of shares is appropriate for the investor. In making this determination, the participating broker-dealer will rely on relevant information provided by the investor, including information as to the investor's age, investment objectives, investment experience, income, net worth, financial situation, other investments and other pertinent information. Each investor should be aware that the participating broker-dealer will be responsible for determining whether this investment is appropriate for your portfolio. However, you are required to represent and warrant in the subscription agreement or, if placing an order through your registered representative not through a subscription agreement in connection with a DTC Settlement subscription, to the registered representative, that you have received a copy of this prospectus and have had sufficient time to review this prospectus. International Assets Advisory, LLC and each participating broker-dealer shall maintain records of the information used to determine that an investment in the Units is suitable and appropriate for an investor. These records are required to be maintained for a period of at least six years.

The disclosure under the heading "Plan of Distribution - Minimum Offering" on page 205 of the Prospectus is deleted in its entirety.

Incorporation of Certain Information by Reference

The following section is added following the section entitled "Where you can Find Additional Information" on page 207 of the Prospectus.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

We have elected to incorporate by reference certain information into this prospectus. By incorporating by reference, we are disclosing important information to you by referring you to documents we have filed separately with the SEC.

The information incorporated by reference is deemed to be part of this prospectus.

The following documents filed with the SEC are incorporated by reference in this prospectus, except for any document or portion thereof deemed to be furnished and not filed in accordance with SEC rules:

Annual Report on Form 10-K for the fiscal year ended December 31, 2011 filed with the SEC on March 15, 2012;
Current Report on Form 8-K filed with the SEC on April 2, 2012; and
Definitive Proxy Statement in respect of our 2012 meeting of stockholders filed with the SEC on March 23, 2012.

The section entitled "Where you can Find Additional Information" above describes how you can obtain or access any documents that we have incorporated by reference herein. The information relating to us contained in this prospectus does not purport to be comprehensive and should be read together with the information contained in the documents incorporated or deemed to be incorporated by reference in this prospectus.

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**Appendix B Form of Direct Registration System Settlement
Subscription Agreement**

The form of Subscription Agreement contained on pages B-1 to B-12 of the Prospectus is hereby replaced in its entirety with the revised form of Direct Registration System Settlement Subscription Agreement attached to this Supplement No. 1 as Appendix B. The form of Direct Registration System Settlement Subscription Agreement supersedes and replaces the form of Subscription Agreement contained in the Prospectus.

**Appendix C Form of Depository Trust Company Settlement
Subscription Agreement**

The form of Depository Trust Company Settlement Subscription Agreement attached to this Supplement No. 1 as Appendix C is added to the Prospectus.

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PREFERRED APARTMENT COMMUNITIES, INC.

INSTRUCTION PAGE

We, Preferred Apartment Communities, Inc., are selling up to a maximum of 150,000 Units (\$150,000,000) in connection with this offering (the Offering).

Funds in the escrow account will be held in a non-interest bearing account.

Your broker-dealer or registered investment advisor should MAIL properly completed and executed ORIGINAL documents, along with your check payable to UMB Bank N.A., Escrow Agent for Preferred Apartment Communities, Inc. to UMB Bank, National Association at the following address or with a wire using the following instructions:

Address:

UMB Bank, National Association
1010 Grand Boulevard, 4th Floor
Mail Stop: 1020409
Kansas City, Missouri 64106
Attention: Lara Stevens, Corporate Trust
Phone: (816) 860-3017
Fax: (816) 860-3029

Wire Instructions:

UMB Bank, N.A.
ABA No: 101000695
Acct No: 9800006823
Acct Name: Trust Clearance
Reference: 138242 Preferred Apt Communities
Attn: Lara Stevens

*For IRA Accounts, mail investor signed documents to the IRA Custodian for signatures.

Instructions to Subscribers

Section 1: Indicate investment amount (Make all checks payable to UMB Bank N.A., Escrow Agent for Preferred Apartment Communities, Inc.)

Section 2: Choose type of ownership

Non-Custodial Ownership

Accounts with more than one owner must have ALL PARTIES SIGN where indicated on page 3. Be sure to attach copies of all plan documents for Pension Plans, Trusts or Corporate Partnerships required in section 2.

Custodial Ownership

For New IRA/Qualified Plan Accounts, please complete the form/application provided by your custodian of choice in addition to this subscription document and forward to the custodian for processing.

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For existing IRA Accounts and other Custodial Accounts, information must be completed BY THE CUSTODIAN.
Have all documents signed by the appropriate office