

ARBOR REALTY TRUST INC

Form S-11/A

July 09, 2004

Table of Contents

As filed with the Securities and Exchange Commission on July 9, 2004

Registration No. 333-116223

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1

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 B. White, III

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square

New York, New York 10036-6522

(212) 735-3000

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

Edgar Filing: ARBOR REALTY TRUST INC - Form S-11/A

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.

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.

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.

Table of Contents

The information in this prospectus is not complete and may be changed or supplemented. The securities described in this prospectus cannot be sold until the registration statement that we have filed to cover the securities has become effective under the rules of the Securities and Exchange Commission. This prospectus is not an offer to sell the securities, nor is it a solicitation of an offer to buy the securities in any jurisdiction where an offer or sale is not permitted.

PROSPECTUS

**SUBJECT TO COMPLETION, DATED JULY 9, 2004
9,594,498 Shares**

Arbor Realty Trust, Inc.

Common Stock

This prospectus relates to up to 9,594,498 shares of common stock of Arbor Realty Trust, Inc. that the selling stockholders named in this prospectus may offer for sale from time to time. The selling stockholders named in this prospectus either currently own the shares they are offering, or may acquire these shares by exercising warrants for shares of common stock. We will not receive any of the proceeds from the sale of any shares by the selling stockholders.

The selling stockholders from time to time may offer and sell the shares held by them directly or through agents or broker-dealers on terms to be determined at the time of sale. These sales may be made on the New York Stock Exchange or other exchanges on which our common stock is then traded, in the over-the-counter market, in negotiated transactions or otherwise at prices and at terms then prevailing or at prices related to the then current market prices or at prices otherwise negotiated. To the extent required, the names of any agent or broker-dealer and applicable commissions or discounts and any other required information with respect to any particular offer will be set forth in a prospectus supplement which will accompany this prospectus. A prospectus supplement also may add, update or change information contained in this prospectus.

Our common stock trades on the New York Stock Exchange under the symbol ABR. The last reported sale price of our common stock on July 6, 2004 was \$20.00 per share.

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.

The market price and trading volume of our common stock may be volatile.

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.

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.

The date of this prospectus is July , 2004.

TABLE OF CONTENTS

PROSPECTUS SUMMARY

Arbor Realty Trust, Inc.

Our Business Strategy

Our Manager

Our Corporate History

Our Structure

Summary Risk Factors

Restrictions on Ownership of Stock

Distribution Policy

Preferred Stock

Tax Status

Conflicts of Interest

The Offering

Summary Selected Consolidated Financial Information of Arbor Realty Trust, Inc. and Subsidiaries

Summary Selected Consolidated Financial Information of the Structured Finance Business of Arbor

Commercial Mortgage, LLC and Subsidiaries

RISK FACTORS

Risks Related to Our Business

Risks Related to Conflicts of Interest

Risks Related to Our Status as a REIT

Risks Related to the Offering

FORWARD LOOKING STATEMENTS

USE OF PROCEEDS

DISTRIBUTION POLICY

**SELECTED CONSOLIDATED FINANCIAL INFORMATION OF ARBOR REALTY TRUST, INC.
AND SUBSIDIARIES**

**SELECTED CONSOLIDATED FINANCIAL INFORMATION OF THE STRUCTURED FINANCE
BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES**

**MANAGEMENT'S DISCUSSION & ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF
OPERATIONS OF ARBOR REALTY TRUST, INC. AND SUBSIDIARIES**

Overview

Significant Accounting Estimates and Critical Accounting Policies

Recently Issued Accounting Pronouncements

Results of Operations

Related Party Transactions

Recent Developments

Quantitative and Qualitative Disclosures about Market Risk

**MANAGEMENT'S DISCUSSION & ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF
OPERATIONS OF THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL
MORTGAGE, LLC AND SUBSIDIARIES**

Overview and Basis of Presentation

Sources of Operating Revenues

Gain on Sale of Loans and Real Estate and Income from Equity Affiliates

Significant Accounting Estimates and Critical Accounting Policies

Results of Operations

Liquidity and Capital Resources

Related Party Transactions

ARBOR REALTY TRUST, INC.

Industry Overview

[Our Business Strategy](#)

[Our Investment Guidelines](#)

[Our Investment Strategy](#)

[Our Real Estate Assets](#)

[Arbor Commercial Mortgage s Retained Interests in Our Investments](#)

[Investments in Mortgage Related Securities](#)

[Operations](#)

[Our Asset Management Operations](#)

[Operating Policies and Strategies](#)

[Our Operating Partnership](#)

[Competition](#)

[Employees](#)

[Legal Proceedings](#)

OUR MANAGER AND THE MANAGEMENT AGREEMENT

[Manager](#)

[Officers of Our Manager](#)

[The Management Agreement](#)

[Management Services](#)

[Management Fees and Incentive Compensation](#)

[Mr. Kaufman s Non-Competition Agreement](#)

[Origination Period](#)

MANAGEMENT

[Our Directors and Executive Officers](#)

[Corporate Governance -- Board of Directors and Committees](#)

[Executive Compensation](#)

[Mr. Kaufman s Non-Competition Agreement](#)

[Stock Incentive Plan](#)

REGISTRATION RIGHTS AND LOCK-UP AGREEMENTS

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

[Conflicts of Interest with Our Manager](#)

[Formation Transactions](#)

[Related Party Loans and Investments](#)

[Other Relationships and Related Transactions](#)

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

DESCRIPTION OF STOCK

[General](#)

[Authorized Stock](#)

[Common Stock](#)

[Preferred Stock](#)

[Special Voting Preferred Stock](#)

[Warrants](#)

[Power to Increase Authorized Stock and Issue Additional Shares of Our Common Stock and Preferred Stock](#)

[Restrictions on Transfer](#)

[Transfer Agent and Registrar](#)

SECURITIES ELIGIBLE FOR FUTURE SALE

IMPORTANT PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS

[The Board of Directors](#)

[Removal of Directors](#)

[Liability and Indemnification of Officers and Directors](#)

[Business Combinations](#)

Control Share Acquisitions

Amendment to Our Charter

Advance Notice of Director Nominations and New Business

Anti-Takeover Effect of Certain Provisions of Maryland Law and of Our Charter and Bylaws

OUR OPERATING PARTNERSHIP AGREEMENT

Management

Transferability of Interests

Capital Contributions and Borrowings

Redemption Rights

Operations

Allocations

Distributions

Amendments

Exculpation and Indemnification of the General Partner

Term

Tax Matters

FEDERAL INCOME TAX CONSIDERATIONS

Taxation of Arbor Realty

Tax Aspects of Investments in Partnerships

Taxation of Taxable U.S. Stockholders

Other Tax Considerations

SELLING STOCKHOLDERS

LEGAL MATTERS

EXPERTS

CHANGE IN ACCOUNTANTS

WHERE YOU CAN FIND MORE INFORMATION

INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS OF ARBOR REALTY TRUST, INC.
AND SUBSIDIARIES

INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS OF THE STRUCTURED FINANCE
BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

OPINION OF VENABLE LLP

OPINION OF SKADDEN ARPS LLP

CONSENT OF GRANT THORNTON LLP

CONSENT OF ERNST & YOUNG LLP

Table of Contents**TABLE OF CONTENTS**

	Page
	<u> </u>
PROSPECTUS SUMMARY	1
Arbor Realty Trust, Inc.	1
Our Business Strategy	2
Our Manager	3
Our Corporate History	7
Our Structure	9
Summary Risk Factors	10
Restrictions on Ownership of Stock	11
Distribution Policy	11
Preferred Stock	12
Tax Status	12
Conflicts of Interest	13
The Offering	14
Summary Selected Consolidated Financial Information of Arbor Realty Trust, Inc. and Subsidiaries	15
Summary Selected Consolidated Financial Information of the Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries	17
RISK FACTORS	19
Risks Related to Our Business	19
Risks Related to Conflicts of Interest	29
Risks Related to Our Status as a REIT	31
Risks Related to the Offering	33
FORWARD LOOKING STATEMENTS	38
USE OF PROCEEDS	39
DISTRIBUTION POLICY	40
PRICE RANGE OF OUR COMMON STOCK	42
SELECTED CONSOLIDATED FINANCIAL INFORMATION OF ARBOR REALTY TRUST, INC. AND SUBSIDIARIES	43
SELECTED CONSOLIDATED FINANCIAL INFORMATION OF THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES	45
MANAGEMENT'S DISCUSSION & ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF ARBOR REALTY TRUST, INC. AND SUBSIDIARIES	47
Overview	47
Significant Accounting Estimates and Critical Accounting Policies	49
Results of Operations	51
Liquidity and Capital Resources	53
Contractual Commitments	55
Related Party Transactions	57
Recent Developments	59
Quantitative and Qualitative Disclosures about Market Risk	60
MANAGEMENT'S DISCUSSION & ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES	62
Overview and Basis of Presentation	62

Table of Contents

	Page
Significant Accounting Estimates and Critical Accounting Policies	63
Results of Operations	65
Pro Forma Effect of Arbor Commercial Mortgage s Asset Contribution on	
Results of Operations	70
Liquidity and Capital Resources	71
Related Party Transactions	72
ARBOR REALTY TRUST, INC	74
Industry Overview	75
Our Business Strategy	75
Our Investment Guidelines	76
Our Investment Strategy	77
Regulatory Aspects of Our Investment Strategy	78
Our Real Estate Assets	79
Arbor Commercial Mortgage s Retained Interests in Our Investments	91
Investments in Mortgage Related Securities	92
Operations	94
Operating Policies and Strategies	96
Our Operating Partnership	99
Competition	100
Employees	100
Legal Proceedings	100
OUR MANAGER AND THE MANAGEMENT AGREEMENT	101
Manager	101
Officers of Our Manager	102
The Management Agreement	103
MANAGEMENT	114
Our Directors and Executive Officers	114
Corporate Governance Board of Directors and Committees	115
Director Compensation	116
Executive Compensation	117
Mr. Kaufman s Non-Competition Agreement	119
Stock Incentive Plan	119
REGISTRATION RIGHTS AND LOCK-UP AGREEMENTS	121
CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS	123
Conflicts of Interest with Our Manager	123
Formation Transactions	123
Related Party Loans and Investments	125
Equity Investments in Our Borrowers	126
Other Relationships and Related Transactions	126
SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND	
MANAGEMENT	128
DESCRIPTION OF STOCK	131
General	131
Authorized Stock	131
Common Stock	131
Preferred Stock	132

Table of Contents

	Page
Special Voting Preferred Stock	132
Warrants	132
Power to Increase Authorized Stock and Issue Additional Shares of Our Common Stock and Preferred Stock	133
Restrictions on Transfer	134
Transfer Agent and Registrar	136
SECURITIES ELIGIBLE FOR FUTURE SALE	137
IMPORTANT PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS	139
The Board of Directors	139
Removal of Directors	139
Liability and Indemnification of Officers and Directors	139
Business Combinations	140
Control Share Acquisitions	141
Amendment to Our Charter	142
Advance Notice of Director Nominations and New Business	142
Anti-Takeover Effect of Certain Provisions of Maryland Law and of Our Charter and Bylaws	142
OUR OPERATING PARTNERSHIP AGREEMENT	143
Management	143
Transferability of Interests	143
Capital Contributions and Borrowings	144
Redemption Rights	145
Operations	146
Allocations	146
Distributions	146
Amendments	147
Exculpation and Indemnification of the General Partner	147
Term	148
Tax Matters	148
FEDERAL INCOME TAX CONSIDERATIONS	149
Taxation of Arbor Realty	149
Tax Aspects of Investments in Partnerships	160
Taxation of Stockholders	161
Other Tax Considerations	165
SELLING STOCKHOLDERS	166
PLAN OF DISTRIBUTION	174
LEGAL MATTERS	176
EXPERTS	176
CHANGE IN ACCOUNTANTS	176
WHERE YOU CAN FIND MORE INFORMATION	177
INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS OF ARBOR REALTY TRUST, INC. AND SUBSIDIARIES	F-1
INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS OF THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES	F-33

Table of Contents

You should rely only on the information contained in this prospectus. We have not 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.

Table of Contents

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.

Table of Contents

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 mortgages. The mortgage-related securities in which we intend to invest will be limited to 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.

As of March 31, 2004, at least 55% of our assets consisted 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 March 31, 2004, our portfolio had an aggregate outstanding balance of \$479.5 million with a weighted average yield of 7.29%. This balance was comprised of \$241.2 million of bridge loans with a weighted average interest rate of 5.83%, \$203.3 million of mezzanine loans with a weighted average interest rate of 9.02%, \$33.1 million of preferred equity investments with a weighted average yield of 7.30%, and \$2.0 million of other investments with a weighted average interest rate of 7.39%. Our borrowings against our portfolio at March 31, 2004 totaled \$326.1 million and had a weighted average interest rate of 3.53%.

Our Business Strategy

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

Table of Contents

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 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.

Table of Contents

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 \$3.2 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 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. We have incurred \$653,779 in base management fees for management services rendered for the five months ended May 31, 2004. All amounts incurred have been paid to date. Our manager did not earn incentive compensation for the quarters ended September 30, 2003, December 31, 2003 or March 31, 2004.

Table of Contents

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 the private placement) ⁽³⁾ , the offering price per share of our common stock (including shares of common stock issued upon exercise of warrants or options) in any subsequent offerings (adjusted for any prior capital dividends or distributions) and the issue price per operating partnership unit for subsequent contributions to our operating partnership, multiplied by (2) the weighted average of our operating partnership's outstanding operating partnership units.	Each fiscal quarter, with at least 25% paid in our common stock, subject to the ownership limits in the charter
Overhead expenses	Compensation of our independent directors, legal, accounting, due diligence tasks and other services that outside professionals perform for us.	Each fiscal quarter in cash
Origination fee income ⁽⁴⁾	An amount equal to 100% of the origination fees paid by the borrower to us with respect to each bridge loan and mezzanine loan we originate, up to 1% of the loan's principal amount.	Upon closing of each loan
Termination fee ⁽⁵⁾	If we terminate or elect not to renew the management agreement in order to manage our portfolio internally, we are required to pay a termination fee equal to the base management fee and incentive compensation for the 12-month period preceding the termination. If, without cause, we terminate or elect not to renew the management agreement for any other reason, including a change of control of us, we are required to pay a termination fee equal to two times the base management fee and incentive compensation paid for the 12-month period preceding the termination.	Upon termination

(1) For purposes of calculating the base management fee, our operating partnership's equity equals the month-end value computed in accordance with generally accepted accounting principles of total partners' equity in our operating partnership, plus or minus any unrealized gains, losses or other items that do not affect realized net income.

(2) At least 25% of the incentive compensation paid to our manager will be in the form of shares of our common stock, subject to ownership limitations in our charter. As of January 1, 2004, the incentive compensation is measured over a full fiscal year, subject to recalculation and potential reconciliation at the end of each fiscal year. We intend to pay our manager each installment of the incentive compensation within sixty (60) days following the last day of the fiscal quarter with respect to which such incentive compensation payment is payable.

(3) We allocated the \$75.00 offering price per unit, each consisting of five shares of common stock and one warrant to purchase an additional share of common stock at an initial exercise price of \$15, to the five shares of common stock comprising each unit, resulting in an offering

price of \$15.00 per share of common stock in the private placement

5

Table of Contents

of 1,610,000 of our units on July 1, 2003. We did not allocate any value to the one warrant underlying each unit because the warrants have an initial exercise price of \$15.00 and, at the time of the private placement they were not exercisable, detachable or freely tradable for an indeterminable period of time (i.e., until after the registration and listing of the common stock comprising the units on a national securities exchange or The Nasdaq Stock Market).

- (4) 100% of the origination fees paid by the borrower in excess of 1% of the loan's principal amount are retained by us.
- (5) The management agreement has an initial term of two years and is renewable automatically for an additional one year period every year thereafter, unless terminated with six months' prior written notice.

Table of Contents

Our Corporate History

On July 1, 2003, Arbor Commercial Mortgage contributed the majority of its structured finance portfolio to our operating partnership. These initial assets, consisting of 12 bridge loans, five mezzanine loans, five preferred equity investments and two other real estate related investments, were transferred at book value, which approximates fair value, that, at June 30, 2003, represented \$213.1 million in assets financed by \$169.2 million borrowed under Arbor Commercial Mortgage's credit facilities and supported by \$43.9 million in equity. Simultaneously with Arbor Commercial Mortgage's contribution of assets, we issued and sold 1,610,000 of our units, each consisting of five shares of our common stock and one warrant to purchase an additional share of common stock at an initial exercise price of \$15.00 per share, in a private placement. 1,327,989 of these units were sold to JMP Securities LLC, as initial purchaser, and were simultaneously resold by JMP Securities in transactions exempt from the registration requirements of the Securities Act of 1933, as amended, to persons reasonably believed by JMP Securities to be qualified institutional buyers (as defined in Rule 144A under the Securities Act) and to a limited number of institutional accredited investors (as defined in Rule 501 under the Securities Act). The remaining 282,011 units were sold directly by us to individual accredited investors. Certain investors in the private placement included institutions and individuals affiliated with us and JMP Securities.

In connection with its contribution of the initial assets, Arbor Commercial Mortgage arranged for us to have substantially similar credit facilities as those used by Arbor Commercial Mortgage to finance these assets. In exchange for the asset contribution, we issued to Arbor Commercial Mortgage approximately 3.1 million operating partnership units, each of which Arbor Commercial Mortgage may redeem for one share of our common stock or an equivalent amount in cash, at our election, and approximately 629,000 warrants, each of which entitles Arbor Commercial Mortgage to purchase one additional operating partnership unit at an initial exercise price of \$15.00. The operating partnership units and warrants for additional operating partnership units issued to Arbor Commercial Mortgage were valued at approximately \$43.9 million at July 1, 2003, based on the price offered to investors in our units in the private placement. Each of the approximately 3.1 million operating partnership units received by Arbor Commercial Mortgage is paired with one share of our special voting preferred stock that entitles the holder to one vote on all matters submitted to a vote of our stockholders. As operating partnership units are redeemed for shares of our common stock or cash, an equivalent number of shares of special voting preferred stock will be redeemed and cancelled. See Description of Stock Special Voting Preferred Stock. Arbor Commercial Mortgage owns approximately a 17% limited partnership interest in our operating partnership and the remaining 83% interest in our operating partnership is owned by us. In addition, Arbor Commercial Mortgage has approximately 17% of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage's warrants for additional operating partnership units).

In connection with the private placement, we entered into a registration rights agreement with JMP Securities for the benefit of the purchasers of the units in the private placement. Pursuant to that agreement, we have filed a shelf registration statement, of which this prospectus is a part, covering the resale by the selling stockholders named in this prospectus of the common stock comprising the units and underlying the warrants comprising the units sold in the private placement. The shelf registration statement includes the shares of common stock listed under The Offering.

At the time of the private placement we also entered into a registration rights agreement with Arbor Commercial Mortgage whereby we granted Arbor Commercial Mortgage certain demand and other registration rights with respect to shares of common stock that may be issued to Arbor Commercial Mortgage upon redemption of the 3,146,724 operating partnership units issued to Arbor Commercial Mortgage concurrently with the private placement and 629,345 operating partnership units issuable to Arbor Commercial Mortgage upon exercise of its warrants for additional operating partnership units.

On April 13, 2004, we sold 6,272,500 shares of common stock in an underwritten initial public offering at \$20.00 per share. Concurrently with the initial public offering, we sold 500,000 shares of common stock directly to Kojaian Ventures, L.L.C. an entity wholly-owned by C. Michael Kojaian, one of our directors. In addition, in connection with our initial public offering, a selling stockholder also sold

Table of Contents

22,500 shares of common stock. Wachovia Capital Markets, LLC, UBS Securities LLC, JMP Securities LLC, Bear, Stearns & Co. Inc., Friedman, Billings, Ramsey & Co., Inc., Legg Mason Wood Walker, Incorporated, Lehman Brothers Inc., Northeast Securities, Inc., and Piper Jaffray & Co. acted as underwriters of the initial public offering. On May 11, 2004, the underwriters of the initial public offering exercised their over-allotment option to purchase 524,200 additional shares of common stock. We refer to our initial public offering and the offering to Kojaian Ventures, L.L.C. as the concurrent offerings. In connection with the concurrent offerings, we received proceeds of approximately \$135.2 million, after deducting underwriters' discounts and commissions and offering expenses. We used the net proceeds of the concurrent offerings to pay down indebtedness.

Table of Contents

Our Structure

The following chart shows our structure:

- (1) Holders of Class A and Class B membership interests of Arbor Commercial Mortgage have the same voting rights and are both entitled to distributions in accordance with their percentage ownership interests in Arbor Commercial Mortgage. However, holders of Class B membership interests cannot transfer their interests or compete with Arbor Commercial Mortgage without the consent of the managing member, Arbor Management, LLC, an entity wholly owned by Mr. Ivan Kaufman and his wife.
- (2) Mr. Kaufman, the Ivan and Lisa Kaufman Family Trust, a trust created by Mr. Kaufman for the benefit of Mr. Kaufman's family, and Arbor Management collectively hold all the outstanding Class A membership interests which constitute 64% of the outstanding membership interests of Arbor Commercial Mortgage. Mr. Kaufman and the Ivan Kaufman Grantor Retained Trust, of which Mr. Kaufman is a co-trustee hold Class B membership interests which constitute 24% of the outstanding membership interests of Arbor Commercial Mortgage. Mr. Kaufman, together with the Kaufman entities which include the Ivan and Lisa Kaufman Family Trust, the Ivan Kaufman Grantor Retained Trust and Arbor Management, beneficially own approximately 88% of the outstanding membership interests of Arbor Commercial Mortgage. See Security Ownership of Beneficial Owners and Management.
- (3) Messrs. Herbst and Weber and Messrs. Martello and Horn, two of our directors, collectively hold approximately 5% of the outstanding membership interests in Arbor Commercial Mortgage as Class B membership interests. In addition, Mr. Martello also serves as (a) trustee of the Ivan and Lisa Kaufman Family Trust and (b) co-trustee, along with Mr. Kaufman, of the Ivan Kaufman Grantor Retained Annuity Trust.
- (4) Arbor Commercial Mortgage holds 3,146,724 shares of our special voting preferred stock, which entitles it to 17% of the voting power of our outstanding stock. These shares of special voting preferred stock are paired with 3,146,724 operating partnership units held by Arbor Commercial Mortgage and will be redeemed upon redemption of these operating partnership units. Assuming the redemption of all Arbor Commercial Mortgage's operating partnership units for shares of our common stock, Arbor Commercial Mortgage would retain 17% of the voting power of our outstanding stock. The 17% figure does not give effect to the exercise of Arbor Commercial Mortgage's 629,345 warrants for additional operating partnership units, each of which is exercisable

Table of Contents

for an additional partnership unit that will be paired with one share of our special voting preferred stock. Assuming Arbor Commercial Mortgage's exercise of all warrants for additional operating partnership units paired with shares of our special voting preferred stock, it would have a 20% partnership interest in our operating partnership and 20% of the voting power of our outstanding stock.

(5)