
Section 1: S-8 (S-8)

As filed with the Securities and Exchange Commission on February 24, 2017

**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)

Maryland

(State or other jurisdiction of incorporation or organization)

77-0404318

(I.R.S. Employer Identification No.)

**671 N. Glebe Road, Suite 800
Arlington, VA 22203**

(Address of Principal Executive Offices) (Zip Code)

AvalonBay Communities, Inc. Deferred Compensation Plan
(Full title of the plans)

**Timothy J. Naughton
Chairman of the Board,
Chief Executive Officer and President
AvalonBay Communities, Inc.
671 N. Glebe Road, Suite 800
Arlington, VA 22203**

(Name and Address of Agent For Service)

(703) 329-6300

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

With a copy to:

John O. Newell

Goodwin Procter LLP
100 Northern Avenue
Boston, Massachusetts 02210

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

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Deferred Compensation Obligations	\$ 20,000,000	\$ 20,000,000	\$ 2,318

- (1) The deferred compensation obligations being registered are general unsecured obligations of AvalonBay Communities, Inc. (the "Company") to pay deferred compensation in the future in accordance with the terms of the AvalonBay Communities Deferred Compensation Plan (the "Plan").
- (2) This estimate is made pursuant to Rule 457(h) under the Securities Act of 1933, as amended (the "Securities Act"), based on the estimated amount of compensation that may be deferred under the Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

As permitted by the rules of the Securities and Exchange Commission (the "Commission"), this registration statement omits the information specified in Part I of Form S-8. The documents containing the information specified in Part I of this registration statement will be sent or given to eligible employees as specified in Rule 428(b)(1) promulgated under the Securities Act. Such documents are not being filed with the Commission either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Company with the Commission pursuant to the Securities Act, and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are incorporated herein by reference and made a part hereof:

- the Company's Annual Report on Form 10-K for the year ended December 31, 2016, filed with the Commission on February 24, 2017;
- the Company's Current Report on Form 8-K, filed with the Commission on February 21, 2017; and
- the description of the Company's common stock set forth in the Company's Registration Statement on Form 8-B filed on June 8, 1995.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or amended, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Under the Plan, the Company will provide certain management and highly compensated employees of the Company (each a "Participant") the opportunity to defer a specified percentage of their compensation. The securities being registered represent obligations (the "Obligations") of the Company under the Plan to pay to the Participants the value of the deferred compensation in the future. The Plan does not provide for any fixed or guaranteed rate of return on compensation deferred by Participants. The Company does not guarantee the performance of any of the investment measurement options available to Participants under the Plan, nor does it guarantee any minimum return or payments to any Participant, which may be more or less than the amount(s) of compensation that a Participant elected to defer.

Amounts credited (or charged) to a Participant's account are credited (or charged) with notional earnings (or losses) based on the performance of investment measurement options under the Plan (which generally will be the selection of mutual funds available for investment through the Company's 401(k) Plan). Although the actual assets held under the Plan for the purposes of eventually paying Plan benefits are not required to be invested in the measurement options selected by Participants, the Company's practice has been, and the Company intends to

continue to, invest the actual assets of the Plan in the measurement funds, which will generally allow the actual assets of the Plan to approximate or equal the Company's obligation to pay to the Participants the value of their deferred compensation in the future. A Participant's account may also be debited based on its proportionate share of the Plan's administrative expenses.

Subject to the terms of the Plan, the Obligations are generally payable in a lump sum payment, or in annual installments over specified periods, as permitted by the terms of the Plan, upon the termination of the Participant's employment with the Company, death of the Participant, retirement of the Participant from the Company, or pursuant to certain Participant elections with respect to short-term payouts during employment from in-service distribution accounts. The Plan also permits payouts in the event of certain unforeseeable financial emergencies if approved by the committee administering the Plan.

The Obligations are unsecured general obligations of the Company and rank pari passu with other unsecured and unsubordinated indebtedness of the Company. Except as expressly permitted by the terms of the Plan, the Obligations may not be sold, assigned, pledged, mortgaged, hypothecated, alienated, encumbered or in any way transferred or conveyed in advance of receipt.

There is no trading market for the Obligations. The Obligations are not convertible into any other security of the Company.

The Company may amend or modify the Plan at any time and for any reason. No amendment or modification will decrease or restrict the value of the Obligations in existence at the time the amendment or modification is made. The amendment or modification of the Plan shall not affect the right of any Participant who, as of the date of the amendment or modification, has become entitled to the payment of benefits under the Plan to receive such payment.

The Company may also terminate the Plan at any time and for any reason. Upon the termination of the Plan, distributions shall be made to Participants in the normal course, but the Company may accelerate distributions to the extent permitted by applicable law. The termination of the Plan will not adversely affect the right of a Participant who has become entitled to benefits under the Plan; provided however, that the Company has the right to accelerate installment payments without a premium or prepayment penalty by paying the Obligation in a lump sum and without any liability on account of adverse tax consequences from an early or accelerated payment.

The description of the Plan in this Item 4 is a summary only and is qualified in its entirety by reference to the Plan documents filed as exhibits to this Registration Statement.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

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. Insofar as indemnification for liabilities under the Securities Act of 1933 may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act of 1933 and is therefore unenforceable.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Description
4.1	Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of January 1, 2011 (the "Plan"). (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the registrant, filed August 6, 2010).

- 5.1* Opinion of Goodwin Procter LLP.
- 23.1* Consent of Goodwin Procter LLP (included in Exhibit 5.1).
- 23.2* Consent of Independent Registered Public Accounting Firm.
- 24.1* Power of Attorney (included on signature page).

* Filed herewith.

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Section 2: EX-5.1 (EX-5.1)

Exhibit 5.1

February 24, 2017

AvalonBay Communities, Inc.
Ballston Tower
671 N. Glebe Rd, Suite 800
Arlington, Virginia 22203

Re: Legality of Securities to be Registered Under Registration Statement on Form S-8

Ladies and Gentlemen:

This opinion is furnished in connection with the registration statement on Form S-8 (the "Registration Statement") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of deferred compensation obligations (the "Obligations") of AvalonBay Communities, Inc., a Maryland corporation (the "Company"). The Obligations will arise under the AvalonBay Communities, Inc. Deferred Compensation Plan, as amended and restated (as amended through the date of this opinion, the "Plan"), in which a group of management or highly compensated employees of the Company may participate.

In connection with rendering this opinion, we have examined (i) the Amended and Restated Articles of Incorporation of the Company, as amended through the date hereof, as on file with the Maryland State Department of Assessments and Taxation, (ii) the Amended and Restated By-laws of the Company, as amended through the date hereof, (iii) such records of the corporate proceedings of the Company as we deemed material, (iv) the Registration Statement and the exhibits thereto, (v) the Plan, and (vi) such other certificates, receipts, records and documents as we considered necessary for the purposes of this opinion.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity and completeness of all documents submitted to us as certified, photostatic or facsimile copies, and the authenticity and completeness of the originals of such copies. As to facts material to our opinion, we have relied upon certificates or telephonic confirmations of public officials and certificates, documents, statements and other information of the Company or representatives or officers thereof.

We express no opinion concerning the laws of any jurisdictions other than the laws of the United States of America and the Maryland General Corporation Law, and also express no opinion with respect to the blue sky or securities laws of any state, including Maryland. To the extent that any other laws govern any of the matters as to which we express an opinion herein, we have assumed, without independent investigation, that the laws of such jurisdiction are

identical to those of the Commonwealth of Massachusetts, and we express no opinion as to whether such assumption is reasonable or correct.

Based on the foregoing, we are of the opinion that the Obligations, when established pursuant to the terms of the Plan after approval by or pursuant to the terms of authorization from the Company's Board of Directors and upon issuance and payment therefor in accordance with the terms of the Plan, will be duly authorized and validly issued.

Our opinions are subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors and to general principles of equity, regardless of whether considered in a proceeding in equity or law, and the possible unavailability of specific performance or injunctive relief. In addition, we express no opinion as to the validity, binding effect and enforceability of provisions in the Plan relating to procedures and requirements governing the resolution of disputes. We express no opinion on any provision of the Plan relating to non-reliance, exculpation, disclaimer, limitation of liability, indemnification, contribution, waiver, limitation or exclusion of remedies, or any other provision having a similar effect; compliance with state or United States federal laws relating to fiduciary duty requirements; or state or United States federal laws relating to pension or employee benefits.

We hereby consent to the inclusion of this opinion as Exhibit 5.1 to the Registration Statement. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Sincerely,

/s/ GOODWIN PROCTER LLP

GOODWIN PROCTER LLP

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Section 3: EX-23.2 (EX-23.2)

Exhibit 23.2

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-) pertaining to the AvalonBay Communities, Inc. Deferred Compensation Plan of our reports dated February 24, 2017, with respect to the consolidated financial statements and schedule of Avalon Bay Communities, Inc. and the effectiveness of internal control over financial reporting of AvalonBay Communities, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2016, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

McLean, Virginia
February 24, 2017

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