

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1  
TO  
FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

BAY APARTMENT 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.)

4340 STEVENS CREEK BOULEVARD, SUITE 275  
SAN JOSE, CA 95129  
(Address of Principal Executive Offices)

1996 NON-QUALIFIED EMPLOYEE STOCK PURCHASE PLAN  
(Full title of the Plan)

GILBERT M. MEYER  
CHAIRMAN OF THE BOARD AND PRESIDENT  
BAY APARTMENT COMMUNITIES, INC.  
4340 STEVENS CREEK BOULEVARD, SUITE 275  
SAN JOSE, CA 95129  
(408) 983-1500  
(Name, Address and Telephone Number,  
Including Area Code, of Agent for Service)

copy to:  
DAVID W. WATSON, ESQ.  
GOODWIN, PROCTER & HOAR LLP  
EXCHANGE PLACE  
BOSTON, MA 02109  
(617) 570-1000

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference.

Bay Apartment Communities, Inc. (the "Company") hereby incorporates by reference the documents listed in (a) through (d) below, which have previously been filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act").

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1996;
- (b) The Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1997;
- (c) Current Report on Form 8-K dated January 21, 1997 and Current Report on Form 8-K dated April 18, 1997, as amended by Current Reports on Form 8-K/A dated April 18, 1997, as filed on April 21, 1997 and June 16, 1997, respectively; and
- (d) The description of the Company's Common Stock contained in its registration statement on Form 8-A, dated December 7, 1993 filed

with the Commission pursuant to Section 12 of the Exchange Act and any amendments or reports filed for the purpose of updating such description.

In addition, all documents subsequently filed by the Company with the Commission pursuant to Sections 13(a) and (c), Section 14 and Section 15(d) of the Exchange Act, prior to the filing of a post-effective amendment hereto which indicates that all securities offered hereunder have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

The Company's Articles of Incorporation and Bylaws, each as amended, provide certain limitations on the liability of the Company's directors and officers for monetary damages to the Company. The Articles of Incorporation and Bylaws obligate the Company to indemnify its directors and officers, and permit the Company to indemnify its employees and other agents, against certain liabilities incurred in connection with their service in such capacities. The Company has entered into indemnification agreements with certain of its executive officers and members of the Board of Directors who are not officers of the Company, pursuant to which the Company has agreed to indemnify them against certain liabilities incurred in connection with their service as executive officers and/or directors. These provisions and contracts could reduce the legal remedies available to the Company and its stockholders against these individuals.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

5.1\* Opinion of Goodwin, Procter & Hoar LLP as to the legality of the securities being registered

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23.1 Consent of Coopers & Lybrand L.L.P., Independent Accountants  
23.2\* Consent of Goodwin, Procter & Hoar LLP  
24.1\* Powers of Attorney  
99.1 Bay Apartment Communities, Inc. - 1996 Non-Qualified Employee  
Stock Purchase Plan  
99.2 Bay Apartment Communities, Inc. - 1996 Non-Qualified Employee  
Stock Purchase Plan - Plan Information Statement

- -----  
\* Previously filed

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii)

herein do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the undersigned registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement;

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

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

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of any employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

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#### SIGNATURES

Pursuant to the requirements of the Securities Act, Bay Apartment Communities, Inc. certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Jose, California on this 26th day of June, 1997.

BAY APARTMENT COMMUNITIES, INC.

By: /s/ Gilbert M. Meyer

-----  
Gilbert M. Meyer  
Chairman of the Board and President

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the date indicated.

<TABLE>  
<CAPTION>

Signature -----	Capacity -----	Date ----
<S> /s/ Gilbert M. Meyer ----- Gilbert M. Meyer	<C> Chairman of the Board and President (Principal Executive Officer)	<C> June 26, 1997
* ----- Max L. Gardner	Executive Vice President, Chief Operating Officer and Director	June 26, 1997

* ----- Geoffrey L. Baker	Vice President, Chief Development and Acquisition Officer and Director	June 26, 1997
* ----- Bruce A. Choate	Director	June 26, 1997
* ----- Brenda J. Mixson	Director	June 26, 1997
* ----- Thomas H. Nielsen	Director	June 26, 1997
* ----- John J. Healy, Jr.	Director	June 26, 1997
* ----- Jeffrey B. Van Horn	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	June 26, 1997

</TABLE>

\* By: /s/ Gilbert M. Meyer  
-----  
Gilbert M. Meyer  
Attorney-in-Fact

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Pursuant to the requirements of the Securities Act, the undersigned directors who constitute all of the members of the Compensation Committee who administer the 1996 Non-Qualified Employee Stock Purchase Plan (or other persons who administer the employee benefit plan) have duly caused this registration statement to be signed on their behalf by the undersigned, thereunto duly authorized, in the City of San Jose, State of California, on June 26, 1997.

By: /s/ Gilbert M. Meyer  
-----  
Gilbert M. Meyer  
Chairman of the Board and President

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the date indicated.

Signature -----	Capacity -----	Date ----
<S>	<C>	<C>
* ----- Bruce A. Choate	Member of Compensation Committee	June 26, 1997
/s/ John J. Healy, Jr. ----- John J. Healy, Jr.	Member of Compensation Committee	June 26, 1997
* ----- Brenda J. Mixson	Member of Compensation Committee	June 26, 1997
* ----- Thomas H. Nielsen	Member of Compensation Committee	June 26, 1997

</TABLE>

\* By: /s/ Gilbert M. Meyer  
-----  
Gilbert M. Meyer  
Attorney-in-Fact

## EXHIBIT INDEX

Exhibit No. - - - - -	Description - - - - -
5.1*	Opinion of Goodwin, Procter & Hoar LLP as to the legality of the securities being registered
23.1	Consent of Coopers & Lybrand L.L.P., Independent Accountants
23.2*	Consent of Goodwin, Procter & Hoar LLP
24.1*	Powers of Attorney
99.1	Bay Apartment Communities, Inc. - 1996 Non-Qualified Employee Stock Purchase Plan
99.2	Bay Apartment Communities, Inc. - 1996 Non-Qualified Employee Stock Purchase Plan - Plan Information Statement

- - - - -  
\* Previously filed.

## CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in this registration statement of Bay Apartment Communities, Inc. on Form S-8 (File No. 333-16837) of our report dated January 24, 1997, except for note 14 for which the date is March 7, 1997, on our audits of the consolidated financial statements and financial statement schedule of Bay Apartment Communities, Inc. as of December 31, 1996 and 1995, and for the two years in the period ended December 31, 1996, the period from March 17, 1994 to December 31, 1994, and the period January 1, 1994 to March 16, 1994, for the Greenbriar Group, which report is included in the 1996 Annual Report on Form 10-K, of our reports dated March 18, 1997, on our audits of the Historical Summary of Revenues and Direct Operating Expenses of Rancho Penasquitos Racquet Club for the year ended December 31, 1996, the Historical Summary of Revenues and Direct Operating Expenses of The Village Apartments for the year ended December 31, 1996, the Historical Summary of Revenues and Direct Operating Expenses of Banbury Cross Apartments for the year ended December 31, 1996, and the Historical Summary of Revenues and Direct Operating Expenses of Villa Serena Apartments for the year ended December 31, 1996, which are included in the Current Report on Form 8-K dated April 18, 1997, and of our report dated March 18, 1997, on our audit of the Historical Summary of Revenues and Direct Operating Expenses of Genesee Gardens Apartments for the year ended December 31, 1996, which is included in the Current Report on Form 8-K/A dated April 18, 1997.

/s/ COOPERS & LYBRAND L.L.P.

San Francisco, California  
June 26, 1997

## BAY APARTMENT COMMUNITIES, INC.

## 1996 NON-QUALIFIED EMPLOYEE STOCK PURCHASE PLAN

THIS DOCUMENT CONSTITUTES PART OF A PROSPECTUS COVERING SECURITIES  
THAT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933

JUNE 26, 1997

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1. Purpose

The primary purpose of this Plan is to encourage Stock ownership by each Eligible Director and each Eligible Employee in the belief that such ownership will increase his or her interest in the success of Bay.

2. Definitions

2.1 Account shall mean the separate bookkeeping account which shall be established and maintained by the Plan Administrator for each Participant for each Purchase Period to record the contributions made on his or her behalf to purchase Stock under the Plan.

2.2 Bay shall mean Bay Apartment Communities, Inc., a corporation incorporated under the laws of the State of Maryland, and any successor to Bay.

2.3 Beneficiary shall mean the person designated as such in accordance with Section 9.

2.4 Board shall mean the Board of Directors of Bay.

2.5 Closing Price (a) for the first day of any Purchase Period shall mean the closing price for a share of Stock as reported for such day on the New York Stock Exchange or, if no such closing price is so reported for such day, the first closing price which is so reported after such day or, if no such closing price is so reported during the two week period which begins on the first day of such Purchase Period, the fair market value of a share of Stock as determined as of the first day of such Purchase Period by the Committee and (b) for the last day of a Purchase Period shall mean the closing price for a share of Stock as reported for such day on the New York Stock Exchange or, if no such closing price is so reported for such day, the last such closing price which is so reported before such day or, if no such closing price is so reported during the two week period which ends on the last day of such Purchase Period the fair market value of a share of Stock as determined as of the last day of such Purchase Period by the Committee.

2.6 Committee shall mean the Compensation Committee of the Board.

2.7 Election Form shall mean the form which an Eligible Director or Eligible Employee shall be required to properly complete in writing and timely file in order to make any of the elections available to an Eligible Director or Eligible Employee under this Plan.

2.8 Election Period shall mean a period which (a) shall come before a related Purchase Period and (b) shall continue for two calendar months (or such other period as may be set by the Committee).

2.9 Eligible Director shall mean a person (other than an officer or employee of Bay or a Participating Employer) who has been a member of the Board for at least one full calendar month.

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2.10 Eligible Employee shall mean each officer or employee of a Participating Employer

(a) who is shown on the payroll records of a Participating Employer as a full-time employee and has completed at least one full calendar month of employment with a Participating Employer; or

(b) who has performed one "year of service," defined as any twelve-month period beginning on such employee's first day of employment or on any anniversary thereof in which he or she is credited with at least 1,000 hours of service.

2.11 Participant shall mean (a) for each Purchase Period an Eligible Director or Eligible Employee who has elected to purchase Stock in accordance with Section 5 in such Purchase Period and (b) for any period any person for whom Stock is held pending delivery under Section 8.

2.12 Participating Employer shall mean Bay Apartment Communities, Inc. and any organization owned in whole or in part, directly or indirectly, by Bay Apartment Communities, Inc., which is designated as such by the Committee.

2.13 Plan shall mean the Bay Apartment Communities, Inc. - 1996 Non-Qualified Employee Stock Purchase Plan, as amended and restated, as originally effective as of October 29, 1996 and as thereafter amended from time to time.

2.14 Plan Administrator shall mean Bay or Bay's delegate.



2.15 Purchase Period shall mean a period of six months beginning each January 1 and July 1 or such other period set by the Committee before the beginning of the related Election Period which shall begin on a date which follows the end of such Election Period and which shall run for no more than one year.

2.16 Purchase Price for each Purchase Period shall mean a price which is equal to the lesser of 85% of the Closing Price for a share of Stock on the first day of such period or 85% of the Closing Price on the last day of such period.

2.17 Stock shall mean the \$.01 par value common stock of Bay.

3. Stock Issuable.

The maximum number of shares of Stock reserved and available for purchase under the Plan shall be 1,000,000 shares. The shares available for purchase under the Plan may be authorized but unissued shares of Stock, shares held in the treasury of Bay, or from any other proper source. In the event of a stock dividend, stock split or similar capitalization affecting the Stock, the Committee shall make appropriate adjustments in the number of shares of Stock available for issuance under the Plan and the Purchase Price.

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4. Administration

Except for the exercise of those powers expressly granted to the Committee to determine the Closing Price and who is a Participating Employer and to set the Election Period and the Purchase Period, the Plan Administrator shall be responsible for the administration of this Plan and shall have the power in connection with such administration to interpret the Plan and to take such other action in connection with such administration as the Plan Administrator deems necessary or equitable under the circumstances. The Plan Administrator also shall have the power to delegate the duty to perform such administrative functions as the Plan Administrator deems appropriate under the circumstances. Any person to whom the duty to perform an administrative function is delegated shall act on behalf of and shall be responsible to the Plan Administrator for such function. Any action or inaction by or on behalf of the Plan Administrator under this Plan shall be final and binding on each Eligible Director, each Eligible Employee, each Participant and on each other person who makes a claim under this Plan based on the rights, if any, of any such Eligible Director, Eligible Employee or Participant under this Plan.

5. Participation

Each person who is an Eligible Director or an Eligible Employee on the last day of an Election Period shall be a Participant in this Plan for the related Purchase Period if he or she properly completes and files an Election Form with the Plan Administrator on or before such date to elect to participate in this Plan. An Election Form may require an Eligible Employee to provide such information and to agree to take such action (in addition to the action required under Section 6) as the Plan Administrator deems necessary or appropriate in light of the purpose of this Plan or for the orderly administration of this Plan. By completing and filing an Election Form, each Participant thereby agrees that after acquiring Stock pursuant to Section 7 hereof, such Stock will not be sold, transferred or otherwise disposed of by such Participant within six (6) months of the date of such purchase without the prior written consent of Bay. Any request for such consent shall be made in writing addressed to Bay at the following address: 4340 Stevens Creek Blvd., Suite 275, San Jose, CA 95129, Attention: Chief Financial Officer.

6. Contributions

(a) Initial Contributions. Each Participant's Election Form under Section 5 shall specify the contributions which he or she proposes to make for the related Purchase Period by means of payroll deduction and shall indicate whether he or she proposes to make cash contributions. Contributions by means of payroll deduction shall be expressed as a specific dollar amount or a percentage of the Participant's compensation that his or her Participating Employer is authorized to deduct from his or her compensation each pay day during the Purchase Period, provided

(1) the minimum payroll deduction for a Participant for each pay period for purchases under this Plan shall be \$10.00, and

(2) the maximum payroll contribution and cash contribution which a Participant can make for purchases under this Plan for any calendar year shall be \$100,000.

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Any contributions which a Participant elects to make in cash may be

made at any time during a Purchase Period, up through the last day of the Purchase Period.

(b) Changes in Contributions and Withdrawals. A Participant shall have the right to amend his or her Election Form after the end of an Election Period to change or to stop his or her payroll contributions, and such election shall be effective as soon as practicable after the Plan Administrator actually receives such amended Election Form. A Participant also shall have the right at any time on or before the last day of a Purchase Period to withdraw (without interest) all or any part of the contributions credited to his or her Account for such Purchase Period by delivering an amended Election Form to the Plan Administrator on or before the last day of such Purchase Period. A withdrawal shall be deducted from the Participant's Account as of the date the Plan Administrator receives such amended Election Form, and the actual withdrawal shall be effected by the Plan Administrator as soon as practicable after such date.

(c) Section 401(k) Hardship Withdrawals. If an Eligible Employee makes a hardship withdrawal from an employee benefit plan maintained by Bay or any Participating Employer and the Plan Administrator determines that such withdrawal requires a suspension of contributions under this Plan in order for such other plan to continue to satisfy the requirements of Section 401(k) of the Internal Revenue Code of 1986, as amended, the Plan Administrator shall have the right unilaterally to suspend such contributions.

(d) Account Credits, General Assets and Taxes. All payroll deductions made for a Participant shall be credited to his or her Account as of the pay day on which the deduction is made. All contributions made by a Participant under this Plan, whether in cash or through payroll deductions, shall be held by Bay or by such Participant's Participating Employer, as agent for Bay. All such contributions shall be held as part of the general assets of Bay and shall not be held in trust or otherwise segregated from Bay's general assets. No interest shall be paid or accrued on any such contributions. Each Participant's right to the contributions credited to his or her Account shall be that of a general and unsecured creditor of Bay. Each Participating Employer shall have the right to make such provisions as it deems necessary or appropriate to satisfy any tax laws with respect to purchases of Stock made under this Plan. If a Participant elects to withdraw all of his or her Account under Section 6(b), his or her status as a Participant shall terminate as of the date the Plan Administrator receives such election.

(e) Automatic Refunds. The balance credited to the Account of an Eligible Director automatically shall be refunded in full (without interest) if his or her status as a member of the Board terminates for any reason whatsoever during a Purchase Period, and the balance credited to the Account of an Eligible Employee automatically shall be refunded in full (without interest) if his or her status as an employee of a Participating Employer terminates for any reason whatsoever during a Purchase Period. Such refunds shall be made as soon as practicable after the Plan Administrator has actual notice of any such termination. A person's

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status as a Participant under this Plan shall terminate at the same time as his or her status as an Eligible Director or Eligible Employee terminates.

#### 7. Purchase of Stock

If a Participant is an Eligible Director or an Eligible Employee through the end of a Purchase Period, the balance which remains credited to his or her Account at the end of such Purchase Period automatically shall be applied in full to purchase Stock at the Purchase Price for such Stock for such Purchase Period. Such Stock shall be purchased on behalf of the Participant by operation of this Plan in whole shares and in any fraction of a whole share (computed to the number of decimal places set by the Plan Administrator) which can be purchased with the remaining balance credited to the Participant's Account.

#### 8. Delivery

Unless otherwise requested by the Participant, shares of Stock purchased under the Plan will be held in the name of Bay's transfer agent or its nominees. The number of shares credited to a Participant's account under the Plan will be shown on his or her statement of accounts. Upon the written request of a Participant, a stock certificate representing any shares of Stock purchased under this Plan shall be delivered to a Participant registered in his or her name or, if the Participant so elects on such Election Form and if permissible under applicable law, in the names of the Participant and one such other person as may be designated by the Participant, as joint tenants with rights of survivorship. However, (a) no stock certificate representing a fractional share of Stock shall be delivered to a Participant or to a Participant and any other person, (b) cash which the Plan Administrator deems representative of the value of a Participant's fractional share shall be distributed (when a Participant requests a distribution of all of the shares of Stock held for such Participant) in lieu of such fractional share and (c) the Plan Administrator shall have the right to charge a Participant for registering Stock in the name of a Participant

and any other person. No Participant (or any person who makes a claim for, on behalf of or in place of a Participant) shall have any interest in any shares of Stock under this Plan until the certificate for such shares of Stock has been delivered to such person or such shares have been credited to a brokerage account maintained for the benefit of such person.

9. Designation of Beneficiary

A Participant may designate on his or her Election Form a Beneficiary (a) who shall receive the balance credited to his or her Account if the Participant dies before the end of a Purchase Period and (b) who shall receive the Stock, if any, purchased for the Participant under this Plan if the Participant dies after the end of a Purchase Period but before either the certificate representing such shares of Stock has been delivered to the Participant or before such Stock has been credited to a brokerage account maintained for the Participant. Such designation may be revised in writing at any time by the Participant by filing an amended Election Form, and his or her revised designation shall be effective at such time as the Plan

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Administrator receives such amended Election Form. If a deceased Participant fails to designate a Beneficiary or, if no person so designated survives a Participant, or if after checking his or her last known mailing address, the whereabouts of the person so designated are unknown, then the Participant's estate shall be treated as his or her designated Beneficiary under this Section 9.

10. Transferability

Neither the balance credited to a Participant's Account nor any rights to receive shares of Stock under this Plan may be assigned, encumbered, alienated, transferred, pledged or otherwise disposed of in any way by a Participant during his or her lifetime or by his or her designated Beneficiary or by any other person during his or her lifetime, and any attempt to do so shall be without effect.

11. Amendment or Termination

This Plan may be amended by the Board from time to time to the extent that the Board deems necessary or appropriate, and any such amendment shall be subject to the approval of Bay's shareholders to the extent such approval is required under the laws of the State of Maryland; provided, however, no amendment shall be retroactive unless the Board in its discretion determines that such amendment is in the best interest of Bay or such amendment is required by applicable law to be retroactive. The Board also may terminate this Plan and any Purchase Period at any time (together with any related contribution elections) or may terminate any Purchase Period (together with any related contribution elections) at any time, provided, however, no such termination shall be retroactive unless the Board determines that applicable law requires a retroactive termination of this Plan.

12. Notices

All Election Forms and other communications from a Participant to the Plan Administrator under, or in connection with, this Plan shall be deemed to have been filed with the Plan Administrator when actually received in the form specified by the Plan Administrator at the location, or by the person, designated by the Plan Administrator for the receipt of any such Election Form and communications.

13. Employment

The right to elect to participate in this Plan shall not constitute an offer of employment or membership on the Board, and no election to participate in this Plan shall constitute an employment agreement for an Eligible Employee or an agreement with respect to Board membership for an Eligible Director. Any such right or election shall have no bearing whatsoever on the employment relationship between an Eligible Employee and any other person or on an Eligible Director's status as a member of the Board. Finally, no Eligible Director or Eligible Employee shall be induced to participate in this Plan, or shall participate

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in this Plan, with the expectation that such participation will lead to employment or continued employment, and no Eligible Director shall be induced to participate in this Plan, or shall participate in this Plan, with the expectation that such participation will lead to continued membership on the Board.

14. Employment Transfers

No Eligible Employee's employment shall be treated as terminated under this Plan as a result of a transfer between, or among, Participating Employers.

15. Headings, References and Construction

The headings to sections in this Plan have been included for convenience of reference only. Except as otherwise expressly indicated, all references to sections (Section) made herein shall be to sections (Section) of this Plan. This Plan shall be interpreted and construed in accordance with the laws of the State of Maryland.

BAY APARTMENT COMMUNITIES, INC.

/s/ Gilbert M. Meyer  
By: \_\_\_\_\_

President  
Title: \_\_\_\_\_

Date of approval of initial Plan by  
Board of Directors: October 29, 1996

Date of approval of amended and restated  
Plan by Board of Directors: April 25, 1997

Effective date of April 1997 amendments: October 29, 1996

BAY APARTMENT COMMUNITIES, INC.

1,000,000 Shares of Common Stock

Offered in Connection with the

BAY APARTMENT COMMUNITIES, INC.

1996 NON-QUALIFIED EMPLOYEE STOCK PURCHASE PLAN

THIS DOCUMENT CONSTITUTES PART OF A PROSPECTUS COVERING  
SECURITIES THAT HAVE BEEN REGISTERED  
UNDER THE SECURITIES ACT OF 1933

The information set forth herein relates to an aggregate of 1,000,000 shares of common stock, par value \$0.01 per share ("Common Stock"), of Bay Apartment Communities, Inc. (the "Company"), which have been reserved for issuance to employees and directors of the Company or its subsidiaries under the Bay Apartment Communities, Inc. - 1996 Non-Qualified Employee Stock Purchase Plan (the "Plan") and interests in such Plan. The information contained herein also relates to such additional shares of Common Stock as may be issuable under the Plan in the event of a stock dividend, stock-split, split-up, recapitalization or other similar event. See "Administration of the Plan."

The Company's Common Stock is listed on the New York Stock Exchange and the Pacific Exchange under the symbol "BYA".

The date of this Plan Information Statement is June 26, 1996.

#### INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The Company has filed with the Securities and Exchange Commission a registration statement on Form S-8 under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the shares described herein (the "Registration Statement"). For further information, reference is made to the Registration Statement, including the documents incorporated by reference therein, which documents are also incorporated by reference in the Prospectus under the Securities Act. Statements contained herein concerning the provisions of certain documents are not necessarily complete and, in each instance, reference is made to the copy of such document filed as an exhibit to the Registration Statement, each statement being qualified in all respects by such reference.

The Company will provide without charge to each participant in the Plan, on the written or oral request of such person, a copy of (i) any or all of the documents which have been or may be incorporated by reference in Item 3 of the Registration Statement relating to the shares described herein, other than exhibits to such documents unless such exhibits are specifically incorporated by reference into such documents, including, without limitation, the Company's annual report on Form 10-K and the Company's quarterly reports for the current fiscal year and (ii) any other documents required to be delivered to participants pursuant to Rule 428(b) under the Securities Act. Requests for such copies, as well as additional information about the Plan and its administrators, should be directed to: Chief Financial Officer, Bay Apartment Communities, Inc., 4340 Stevens Creek Boulevard, Suite 275, San Jose, CA 95129 (Tel.#408-983-1500).

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

#### DESCRIPTION OF THE PLAN

##### THE PLAN

The Plan was adopted by the Board of Directors on October 29, 1996 and

became effective as of such date (the "Effective Date"). The Plan was subsequently amended and restated on April 25, 1997, and such amendments became effective retroactively as of October 29, 1996. The aggregate maximum number of shares available for purchase under the Plan is 1,000,000 shares of Common Stock, subject to adjustments for changes in the Company's capitalization.

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The Plan is not subject to the provisions of the Employee Retirement Income Security Act of 1974 and is not a qualified plan under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"). The Plan is governed by Maryland law except to the extent such law is preempted by federal law.

PURPOSE

The purpose of the Plan is to provide eligible employees and directors of the Company and certain of its subsidiaries with opportunities to purchase shares of Common Stock, upon favorable terms, directly from the Company.

ADMINISTRATION OF THE PLAN

The Plan provides that it may be administered by the Board of Directors of the Company or by a committee (the "Committee") appointed by the Board of Directors. The Plan is currently administered by the Compensation Committee of the Board of Directors, the members of which are listed in the Appendix to this Plan Information Statement. Subject to the terms of the Plan, the Board of Directors or the Committee has authority to make rules and regulations for the administration of the Plan; its interpretations and decisions with regard thereto shall be final and conclusive. The Committee has appointed American Stock Transfer and Trust Company, New York, New York as its agent in administering the Plan.

In the event of a subdivision of outstanding shares of Common Stock, or the payment of a dividend in Common Stock, the number of shares approved for this Plan shall be increased proportionately, and such other adjustment shall be made as may be deemed equitable by the Committee. In the event of any other change affecting the Common Stock, such adjustment shall be made as may be deemed equitable by the Committee to give proper effect to such event.

All funds received or held by the Company under the Plan may be combined with other corporate funds and may be used for any corporate purpose.

PURCHASE PERIODS

The Plan provides for a series of "Purchase Periods." A Purchase Period is a period of six months beginning each January 1 and July 1 and ending each June 30 and December 31, respectively. The initial Purchase Period will begin on January 1, 1997 and will end on June 30, 1997. Eligible employees and directors may contribute to the Plan during a Purchase Period and purchase Common Stock at the end thereof.

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ELIGIBILITY

All full-time employees of the Company, and all full-time employees of subsidiaries and affiliates of the Company designated by the Committee from time to time and listed in the Appendix to this Plan Information Statement (a "Participating Employer"), are eligible to participate in any one or more of the Purchase Periods under the Plan, provided that as of the last day of the applicable Election Period (as defined below) they have been employed by the Company or a Participating Employer for at least one month. All other employees of the Company and the Participating Employers are eligible to participate, provided that as of the applicable Election Period they have performed one "year of service," defined as any twelve-month period beginning on their first day of employment or any anniversary thereof in which they are credited with at least 1,000 hours of service. All non-employee directors of the Company are eligible to participate in any one or more of the Purchase Periods under the Plan, provided that as of the last day of the applicable Election Period they have been members of the Board of Directors of the Company for at least one month.

PARTICIPATION IN PURCHASE PERIODS

Eligible employees and directors may elect to participate in the Plan by completing and submitting an election form to the Plan Administrator any time during the Election Period, which starts one month before the first day of the Purchase Period and ends one month after the first day of the Purchase Period. The form will state a specific dollar amount or a percentage of compensation to be deducted from the participant's compensation each pay period (which amount shall be at least \$10.00 per pay period) during such Purchase Period. Eligible employees and directors may also indicate on the election form whether or not they plan to make additional cash contributions. Cash contributions may be made at any time, but must be completed before the end of the Purchase Period. The election form will also authorize the purchase of Common Stock under the Plan

and, if the participant elects, will authorize the delivery of certificates representing the shares purchased to the participant and specify the name or names in which such stock certificates are to be issued (see "Delivery of Shares"). The maximum contribution that a participant may make during a calendar year is \$100,000.

The Company or its agent will maintain book accounts showing the amount of cash contributions and payroll deductions made by each participant for each Purchase Period. No interest will accrue on any contributions to the Plan.

#### PAYROLL DEDUCTION CHANGES; WITHDRAWAL FROM PLAN

A participant may increase, reduce or stop his payroll deductions at any time during a Purchase Period by filing an amended election form with the Plan

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Administrator. Such a change will be effective as soon as practicable after the Plan Administrator receives the amended election form.

A participant may withdraw all or any part of the contributions credited to his account for the Purchase Period by delivering an amended election form to the Plan Administrator on or before the last day of such Purchase Period. The participant's withdrawal will be effective as of the day the Plan Administrator receives the amended election form. Following a participant's complete withdrawal, the Company will promptly refund to him his entire account balance under the Plan.

#### PURCHASE OF STOCK

If an eligible employee or director continues to be a participant in the Plan through the end of the Purchase Period, the accumulated cash contributions and payroll deductions credited to his account during such Purchase Period shall be applied in full to purchase whole and fractional shares of Common Stock at the applicable Purchase Price. The purchase price for each share purchased during a Purchase Period will be 85% of the Closing Price for a share of Common Stock on the first day of the Purchase Period or the last day of the Purchase Period, whichever is less. For these purposes, the "Closing Price" means the closing price of the Common Stock as reported on the New York Stock Exchange on a given day or, if no sales of Common Stock were made on that day, the last reported sale price of the Common Stock on the next preceding day on which sales were made.

If the remaining shares of Common Stock reserved for the purposes of the Plan are insufficient to satisfy all purchase requirements, the available shares shall be apportioned among participants in proportion to the amount of cash contributions and payroll deductions accumulated on behalf of each participant that would otherwise be used to purchase stock at the end of such Purchase Period. Any excess contributions will be refunded to the participants.

The Company will issue to each participant after the end of each Purchase Period a statement showing the total amount of cash contributions and payroll deductions credited during such Purchase Period and the total number of shares of Common Stock purchased by such employee or director in such Purchase Period.

#### REQUIRED HOLDING PERIOD

As a condition of participating in the Plan, each Participant agrees that after acquiring shares of Common Stock pursuant to the Plan, such shares of Common Stock will not be sold, transferred or otherwise disposed of by such Participant within six (6) months of the date of such purchase without the prior written consent of the Company. Any request for such consent shall be made in writing addressed to the Company at the following address: 4340 Stevens Creek Blvd., Suite 275, San Jose, California 95129, Attention: Chief Financial Officer.

#### DELIVERY OF SHARES

Unless requested by the participant, certificates for shares of Common Stock purchased under the Plan will not be issued. Shares will be held by the Company or an agent of the Company and the number of shares credited to a participant's account under the Plan will be shown on the participant's statement. Certificates for any number of whole shares credited to a participant's account under the Plan will be issued upon the written request of a participant on an election form. The remaining

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whole shares and fractional shares, if any, will continue to be credited to the participant's account. Certificates may be issued in the name of the

participant, or in the name of the participant and another person of legal age as joint tenants with rights of survivorship. Shares may be issued from authorized but unissued Common Stock, from shares held in the treasury of the Company, or from any other proper source.

#### NON-ASSIGNMENT OF INTEREST; LIENS

A participant's rights under the Plan may not be transferred other than by will or the laws of descent and distribution, and are exercisable during the participant's lifetime only by the participant. A participant's rights under the Plan and shares credited to the account of a participant under the Plan may not be pledged. A participant may pledge shares that have been issued in his name. There is no provision under the Plan, or pursuant to any contract in connection therewith, that would permit any person to create a lien on any participant's account.

#### RIGHTS ON RETIREMENT, DEATH OR OTHER TERMINATION OF EMPLOYMENT

If a participant's employment or status as a member of the Board of Directors terminates for any reason during a Purchase Period, no payroll deduction will be taken from any compensation due and owing to the participant and the balance in the participant's account and any shares of stock held by the Company due to prior purchases under the Plan will be paid to the participant or, in the case of the participant's death, to the participant's designated beneficiary. An eligible employee also will be deemed to have terminated employment, for this purpose, if the corporation that employs the employee ceases to be a Participating Employer or if the employee is transferred to any corporation other than the Company or a Participating Employer.

#### DISPOSITION OF STOCK

Once the stock certificate has been issued to a participant, the participant may sell, pledge, transfer, hypothecate or otherwise dispose of his or her shares of Common Stock acquired pursuant to the Plan in any manner permitted under federal and state securities laws.

The Registration Statement relating to the shares described herein does not apply to reoffers or resales by "affiliates" of the Company of shares of Common Stock acquired by them under the Plan. Rule 405 under the Securities Act provides that an "affiliate" of the Company is "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with" the Company. Affiliates must effect such reoffers or resales either pursuant to an exemption from registration under the Securities Act (such as an exemption obtained through compliance with Rule 144) or pursuant to a separate prospectus covering such

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reoffer or resale. Persons who are not affiliates of the Company generally are entitled to make such reoffers or resales without restrictions.

In addition, every person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding shares of Common Stock, every director and every person who is an officer (within the meaning of Rule 16a-1) of the Company or, in certain circumstances, a subsidiary of the Company, is subject to Sections 16(a) and 16(b) of the Exchange Act, which provide for, respectively, (i) the reporting to the Securities and Exchange Commission of purchases and sales of the equity and derivative securities of the Company, and (ii) the recovery of the difference between the prices of any purchase and sale or any sale and purchase of an equity or derivative security of the Company within a six-month period, without regard to offsetting losses, unless such purchase or sale is exempt. The rules are applied mechanically to maximize recoverable "profits" and may result in liability even though the overall trading actually resulted in a loss. Purchases of stock under the Plan will be exempt from the reporting and liability provisions, while sales of stock purchased under the Plan will generally not be exempt.

To avoid short-swing profits liabilities, a participant in the Plan who is subject to Section 16(a) and Section 16(b) of the Exchange Act should keep in mind the following: (a) sales of stock purchased under the Plan should be reported on Form 4 within ten (10) days after the end of the month in which the stock is sold; and (b) stock purchased under the Plan generally should not be sold within six (6) months before or after any non-exempt purchase of the Company's equity or derivative securities.

The "inside information" provisions of the federal securities laws impose further restrictions on resales by any individual, whether or not the individual is an affiliate or an officer or a director of the Company or any of its subsidiaries.

A discussion of the tax consequences involved in the sale of stock acquired under the Plan is contained below in the "Federal Income Tax Consequences of the Plan" section.

#### TAX WITHHOLDING



Employee participants in the Plan are subject to any required tax withholding on compensation earned under the Plan. The Company will have the right to deduct any such taxes, in its sole discretion, from any amount payable to the employee participants or from any payment of any kind otherwise due to such participants. Employee participants who wish to avoid the withholding of shares otherwise issuable to them under the Plan should arrange with the Company to pay the amount of taxes required to be withheld.

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#### PLAN AMENDMENT AND TERMINATION

This Plan and/or a Purchase Period may be terminated at any time by the Company's Board of Directors. Upon termination of this Plan all amounts in the accounts of participants shall be promptly refunded.

The Board of Directors may at any time, and from time to time, amend this Plan in any respect.

#### FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following is a brief discussion of certain federal tax consequences of participation in the Plan. Under the current provisions of the Code, the purchase of shares of Common Stock under the Plan will generally result in the following federal income tax consequences:

(a) The Plan is not an "employee stock purchase plan" within the meaning of Section 423(b) of the Code. Therefore, an eligible employee or director participating in the Plan will have taxable compensation income equal to the difference between the fair market value of the shares of Common Stock purchased by the eligible employee or director on the applicable purchase date and the Purchase Price for such shares.

(b) A participant's tax basis in the shares of Common Stock acquired under the Plan will be equal to the fair market value of the shares on the applicable purchase date. The participant's holding period for shares of Common Stock acquired on any purchase date will start on such date.

(c) The Company generally will be entitled to a tax deduction equal to the amount includable in the income of the participant.

(d) A participant will not realize any taxable income upon the receipt of a certificate for full shares. A participant will recognize gain or loss when a fractional share is liquidated or when the participant sells or exchanges shares received under the Plan. Such gain or loss will equal the difference between the amount which the participant receives for such fractional share or such shares and the tax basis therefor.

The above is intended only as a general discussion of the federal income tax consequences of participation in the Plan. Participants should consult their own tax advisors regarding these and other federal tax consequences (including the effects of any change in law) of their individual participation in the Plan. In addition, state, local and foreign tax consequences vary from jurisdiction to jurisdiction, and each participant should consult his own tax adviser as to the effect of these taxes in his or her own particular case.

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#### APPENDIX TO PLAN INFORMATION STATEMENT

BAY APARTMENT COMMUNITIES, INC.  
1996 NON-QUALIFIED EMPLOYEE STOCK PURCHASE PLAN

#### Plan Administrators

The Plan is currently being administered by the Compensation Committee of the Board of Directors. The Compensation Committee, comprised of four non-employee directors of the Company, exercises all powers of the Board of Directors in connection with compensation matters, including incentive compensation and benefit plans. The members of the Compensation Committee, as well as all members of the Board of Directors, are elected at each annual meeting of the stockholders (the "Annual Meeting") to serve until the next Annual Meeting, at which time they may or may not be reelected. The names and addresses of the current members of the Compensation Committee are as follows:

Bruce A. Choate  
John J. Healy, Jr.  
Brenda J. Mixson  
Thomas H. Nielsen

Bay Apartment Communities, Inc.  
4340 Stevens Creek Boulevard  
Suite 275  
San Jose, California 95129  
(408) 983-1500

#### Participating Employers

Employees of the Company and any organization owned in whole or in part, directly or indirectly, by the Company, which is designated as such by the Compensation Committee, are eligible to participate in the Plan if they meet the eligibility requirements under the Plan.