

**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 of Incorporation)**2900 Eisenhower Avenue, Suite 300**  
**Alexandria, Virginia 22314**  
**(703) 329-6300**  
(Address of Principal Executive Offices)**77-0404318**  
(I.R.S. Employer Identification No.)**AvalonBay Communities, Inc. 1994 Stock Incentive Plan, as amended and restated**  
(Full Title of the Plan)**Bryce Blair**  
**Chairman of the Board and Chief Executive Officer**  
**AvalonBay Communities, Inc.**  
**2900 Eisenhower Avenue, Suite 300**  
**Alexandria, Virginia 22314**  
(Name and address of agent for service)**(703) 329-6300**  
(Telephone number, including area code, of agent for service)**With copy to:****Gilbert G. Menna, Esq.**  
Goodwin Procter LLP  
Exchange Place  
Boston, Massachusetts 02109-2881  
(617) 570-1000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer a non-accelerated filer or a smaller reporting company (as defined in Rule 12b-2 of the Act).

Large accelerated filer ☒ xAccelerated filer ☐ oNon-accelerated filer ☐ oSmaller reporting company ☐ o**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee (3)
Common Stock, par value \$.01 per share	727,397 shares	\$101.93	\$74,158,124	\$2,913.84

- (1) This registration statement also relates to such indeterminate number of additional shares of the registrant's Common Stock as may be required pursuant to the anti-dilution provisions of the 1994 Stock Incentive Plan, as amended and restated, in the event of a stock dividend, stock split, split-up, recapitalization, forfeiture of stock under the plan or other similar event.
- (2) Calculated pursuant to Rule 457(h) under the Securities Act of 1933, based on the average of the high and low prices for the Common Stock reported on the New York Stock Exchange on May 1, 2008.
- (3) In accordance with Rule 457(h), the filing fee is based on the maximum number of the registrant's securities issuable under the 1994 Stock Incentive Plan, as amended and restated, that are covered by this registration statement.

**Note**

This registration statement on Form S-8 registers 727,397 additional securities of the same class as other securities of the Registrant for which the Registrant previously filed registration statements on Form S-8 under the Securities Act of 1933 relating to its 1994 Stock Incentive Plan, as amended and restated (the "Plan"). Accordingly, the contents of the Registrant's registration statements on Form S-8 (File Nos. , 333-141032, 333-134935, 333-56089, 333-47405, 333-16809 and 33-80249), as filed with the Securities and Exchange Commission ("Commission") on March 2, 2007, June 12, 2006, June 4, 1998, March 5, 1998, November 26, 1996 and December 11, 1995, respectively, are hereby incorporated by reference pursuant to General Instruction E to Form S-8. After giving effect to this filing, an aggregate of 10,611,231 shares of the Registrant's Common Stock, par value \$.01 per share (the "Common Stock"), have been registered for issuance pursuant to the Plan.

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

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

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

- the Registrant's Annual Report on Form 10-K for its fiscal year ended December 31, 2007;
- the Registrant's Current Reports on Form 8-K filed with the Commission on February 12 and March 11, 2008; and
- the description of the Registrant's common stock contained in its Registration Statement on Form 8-A filed pursuant to Section 12(g) of the Securities Exchange Act of 1934.

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

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

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.

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

#### Item 8. Exhibits.

Exhibit No.	Description
5.1	Opinion of Goodwin Procter LLP, as to the legality of the securities being registered.*
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.*
23.2	Consent of Goodwin Procter LLP (included in Exhibit 5.1 hereto).
24.1	Powers of Attorney (included in Part II of this Registration Statement).

\* Filed herewith.

#### Item 9. Undertakings.

(a) The registrant hereby undertakes:

- (1) To file, during any period in which offers are being made, a post-effective amendment to this registration statement to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the

registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has

3

been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

4

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Alexandria, Commonwealth of Virginia, on this 8th day of May, 2008.

AVALONBAY COMMUNITIES, INC.

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

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

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

Signature	Title	Date
<u>/s/ Bryce Blair</u> Bryce Blair	Chairman of the Board and Chief Executive Officer (Principal Executive Officer) and Director	May 8, 2008
<u>/s/ Bruce A. Choate</u> Bruce A. Choate	Director	May 8, 2008
<u>/s/ John J. Healy, Jr.</u> John J. Healy, Jr.	Director	May 8, 2008
<u>/s/ Gilbert M. Meyer</u> Gilbert M. Meyer	Director	May 8, 2008
<u>/s/ Timothy J. Naughton</u> Timothy J. Naughton	President and Director	May 8, 2008
<u>/s/ Lance R. Primis</u> Lance R. Primis	Director	May 8, 2008
<u>/s/ Peter S. Rummell</u> Peter S. Rummell	Director	May 8, 2008

5

<u>/s/ H. Jay Sarles</u> H. Jay Sarles	Director	May 8, 2008
<u>/s/ Allan D. Schuster</u> Allan D. Schuster	Director	May 8, 2008
<u>/s/ Amy P. Williams</u> Amy P. Williams	Director	May 8, 2008
<u>/s/ Thomas J. Sargeant</u>	Chief Financial Officer (Principal Financial and Accounting Officer)	May 8, 2008

**EXHIBIT INDEX**

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\* Filed herewith.

May 8, 2008

AvalonBay Communities, Inc.  
2900 Eisenhower Avenue, Suite 300  
Alexandria, VA 22314

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 on Form S-8 (the "Registration Statement") of 727,397 shares (the "Shares") of the common stock, par value \$.01 per share (the "Common Stock"), of AvalonBay Communities, Inc., a Maryland corporation (the "Company") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), which may be issued from time to time pursuant to the Company's Amended and Restated Incentive Stock Plan (the "Plan").

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinions expressed below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinion set forth below, on certificates of officers of the Company.

The opinion expressed below is limited to the Maryland General Corporation Law (which includes applicable provisions of the Maryland Constitution and reported judicial decisions interpreting the Maryland General Corporation Law and the Maryland Constitution).

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, upon issuance and delivery against payment therefor in accordance with the terms of the Plans, will be validly issued, fully paid and nonassessable.

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

**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. 1994 Stock Incentive Plan, as amended and restated, of our reports dated February 25, 2008, with respect to the consolidated financial statements and schedule of AvalonBay Communities, Inc., included in its Annual Report (Form 10-K) for the year ended December 31, 2007, and the effectiveness of internal control over financial reporting of AvalonBay Communities, Inc. filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP  
McLean, Virginia

May 5, 2008