

AVALONBAY COMMUNITIES INC  
Form 8-K  
August 12, 2009

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d)**  
**OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): **August 12, 2009**

**AVALONBAY COMMUNITIES, INC.**

(Exact name of registrant as specified in its charter)

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Commission file number **1-12672**

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**77-0404318**  
(I.R.S. Employer  
Identification No.)

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**2900 Eisenhower Avenue, Suite 300**

**Alexandria, Virginia 22314**

(Address of principal executive offices)(Zip code)

**(703) 329-6300**

(Registrant's telephone number, including area code)

(Former name, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

In connection with the commencement of a continuous equity offering under which AvalonBay Communities, Inc. (the Company) may sell up to an aggregate amount of \$400 million of shares of its common stock (the Shares) from time to time during a three-year period in at the market offerings or certain other transactions (the Offering), the Company today filed with the Securities and Exchange Commission (the SEC) a prospectus supplement dated August 12, 2009 (the Prospectus Supplement). The Company may sell the Shares in amounts and at times to be determined by the Company from time to time, but has no obligation to sell any of the Shares in the Offering. Actual sales will depend on a variety of factors to be determined by the Company from time to time, including (among others) market conditions, the trading price of the Company's common stock and determinations by the Company of the appropriate sources of funding for the Company.

The Offering will occur pursuant to three separate sales agency financing agreements (individually, a Sales Agreement and together, the Sales Agreements) entered into by the Company with each of BNY Mellon Capital Markets, LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as agents for the offer and sale of the Shares (individually, a Sales Agent and together, the Sales Agents). Each Sales Agreement has a three-year term and provides that the Company may offer and sell from time to time pursuant to the Sales Agreements up to a combined total of \$400,000,000 of shares of its common stock during such three-year term through the Sales Agents. The Sales Agreements provide that each Sales Agent will be entitled to compensation up to 2.0% of the gross sales price per share for any of the Shares sold under the relevant Sales Agreement.

Sales of the Shares, if any, under the Sales Agreements may be made in transactions that are deemed to be at the market offerings as defined in Rule 415 under the Securities Act of 1933, as amended, including sales made directly on the New York Stock Exchange or sales made to or through a market maker other than on an exchange, as well as in negotiated or other transactions described in the Prospectus Supplement. The Company has no obligation to sell any of the Shares in the Offering, and may at any time suspend solicitation and offers under the sales agency financing agreements or terminate the sales agency financing agreements.

The Shares will be issued pursuant to the Prospectus Supplement and the Company's automatic shelf registration statement on Form S-3 (File No. 333-157627) filed on March 2, 2009 with the SEC. This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration of qualification under the securities laws of any such state.

The Sales Agreements are filed as Exhibits 1.1, 1.2 and 1.3 to this Current Report. The description of the Sales Agreements does not purport to be complete and is qualified in its entirety by reference to the Sales Agreements filed herewith as exhibits to the Current Report.

**ITEM 9.01 Financial Statements and Exhibits**

(d) Exhibits.

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<b>Exhibit Number</b>	<b>Description</b>
1.1	Sales Agency Financing Agreement, dated August 12, 2009, by and between AvalonBay Communities, Inc. and BNY Mellon Capital Markets, LLC.
1.2	Sales Agency Financing Agreement, dated August 12, 2009, by and between AvalonBay Communities, Inc. and Deutsche Bank Securities Inc.
1.3	Sales Agency Financing Agreement, dated August 12, 2009, by and between AvalonBay Communities, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
5.1	Opinion of Goodwin Procter LLP regarding the legality of the shares offered
23.1	Consent of Goodwin Procter LLP (included in 5.1)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be filed on its behalf by the undersigned hereunto duly authorized.

AVALONBAY COMMUNITIES, INC.

Dated: August 12, 2009

By: /s/ Thomas J. Sargeant  
Thomas J. Sargeant  
Chief Financial Officer

**INDEX TO EXHIBITS**

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