

Edgar Filing: HOME PROPERTIES INC - Form S-8

HOME PROPERTIES INC
Form S-8
August 18, 2005

As filed with the Securities and Exchange Commission on August 18, 2005

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

HOME PROPERTIES, INC.
(exact name of registrant as specified in its charter)

MARYLAND
(State or other jurisdiction
of incorporation or organization)

16-1455126
(I.R.S. Employer
Identification No.)

850 Clinton Square, Rochester, New York
(Address of Principal Executive Offices)

14604
(Zip Code)

HOME PROPERTIES, INC. SECOND AMENDED AND RESTATED
DIRECTOR DEFERRED COMPENSATION PLAN
(Full title of the Plan)

Ann M. McCormick, Esq.
Executive Vice President, Secretary and General Counsel
Home Properties, Inc.
850 Clinton Square
Rochester, New York 14604
(585) 546-4900
(585) 232-3147
(Name, address, including zip code, and telephone
number, including area code, of agent for service)

Copy to:
Deborah McLean Quinn, Esq.
Nixon Peabody LLP
900 Clinton Square
Rochester, New York 14604
(585) 263-1307
(585) 263-1600

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered(1) ----- | Proposed Maximum Offering Amount to be Registered(1) ----- | Proposed Maximum Aggregate price per share(2) ----- | Amount of Offering Price(2) ----- | Registration Fee ----- |
|---|---|--|--|------------------------------|
| Common Stock \$.01 par value | 50,000(3) | \$40.895 | \$2,044,750 | \$241 |

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(1) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement covers an indeterminate amount of interests to be offered or sold pursuant to the Home Properties Seconded Amended and Restated Director Deferred Compensation Plan.

(2) Inserted solely for the purpose of calculating the registration fee pursuant to Rule 457(h) and based upon the average of the high and low prices for the registrant's Common Stock on the New York Stock Exchange reported as of August 16, 2005.

(3) Shares to be issued pursuant the registrant's Seconded Amended and Restated Director Deferred Compensation Plan, as amended.

Approximate date of commencement of the proposed issuance of the securities to the public: From time to time after the Registration Statement becomes effective.

EXPLANATORY NOTE

Home Properties, Inc. filed a Registration Statement on Form S-8 on May 23, 2000, (Registration No. 333-37624) relating to the registration of shares of common stock of Home Properties, Inc. This Registration Statement on Form S-8 relates to the Home Properties, Inc. Second Amended and Restated Director Deferred Compensation Plan which increased the number of shares of common stock, \$.01 par value per share (the "Common Stock"), to be issued thereunder by 50,000 shares.

Pursuant to General Instruction E of Form S-8, this Registration Statement on Form S-8 registers an additional 50,000 shares of the Company's common stock which may be acquired under the Company's Second Amended and Restated Director Deferred Compensation Plan.

The contents of the previous Registration Statement on Form S-8 filed with the Securities and Exchange Commission on May 23, 2000, (Registration No. 333-37624) are incorporated herein by reference.

Pursuant to a filing on September 24, 2003, an Amendment to the Articles of Incorporation of Home Properties of New York, Inc. filed with the Maryland Department of Assessments and Taxation changed the corporation's name to Home Properties, Inc.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 5. Interests of Named Experts and Counsel.

The validity of the securities offered hereby will be passed upon by Nixon Peabody LLP, Rochester, New York. Certain partners of Nixon Peabody LLP own equity equal to less than 1% of the equity of Home Properties, Inc. and Home Properties, L.P. on a fully diluted basis.

Item 8. Exhibits.

See Exhibit Index.

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SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all 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 Rochester, State of New York, on the 18th day of August, 2005.

HOME PROPERTIES, INC.

By: /s/ Edward J. Pettinella
Edward J. Pettinella
President and Chief
Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby severally constitutes and appoints Edward J. Pettinella, David P. Gardner and Ann M. McCormick each of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for him and in his name, place and stead, in any and all capacities to sign any and all amendments (including post-effective amendments) to the registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each said attorneys-in-fact and agents or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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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.

| | | |
|--|--|-----------------|
| /s/ Edward J. Pettinella Edward J. Pettinella | Director, President and CEO (Principal Executive Officer) | August 18, 2005 |
|--|--|-----------------|

| | | |
|--|--|-----------------|
| /s/ David P. Gardner David P. Gardner | Executive Vice President and Chief Financial Officer (Principal Financial Officer) | August 18, 2005 |
|--|--|-----------------|

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| | | |
|--|---|-----------------|
| /s/Robert J. Luken Robert J. Luken | Senior Vice President, Treasurer and Chief Accounting Officer (Principal Accounting Officer) | August 18, 2005 |
| /s/ Norman P. Leenhouts Norman P. Leenhouts | Director | August 18, 2005 |
| /s/ Nelson B. Leenhouts Nelson B. Leenhouts | Director | August 18, 2005 |
| /s/ William Balderston, III William Balderston, III | Director | August 18, 2005 |
| /s/ Josh E. Fidler Josh E. Fidler | Director | August 18, 2005 |
| /s/ Alan L. Gosule Alan L. Gosule | Director | August 18, 2005 |
| /s/ Leonard F. Helbig, III Leonard F. Helbig, III | Director | August 18, 2005 |
| /s/ Roger W. Kober Roger W. Kober | Director | August 18, 2005 |
| /s/ Clifford W. Smith, Jr. Clifford W. Smith, Jr. | Director | August 18, 2005 |
| /s/ Paul L. Smith Paul L. Smith | Director | August 18, 2005 |
| /s/ Thomas S. Summer Thomas S. Summer | Director | August 18, 2005 |
| /s/ Amy L. Tait Amy L. Tait | Director | August 18, 2005 |

EXHIBIT INDEX

| Exhibit No. | Description | Location |
|----------------|--|--|
| ----- | ----- | ----- |
| 4.1 | Articles of Amendment and Restatement of Articles of Incorporation of Home Properties of New York, Inc. | Incorporated by reference to the Home Properties of New York, Inc. Registration Statement on Form S-11, file No. 33-78862 (the "S-11 |

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| | | Registration Statement"). |
|------|---|---|
| 4.2 | Articles of Amendment of Articles of Incorporation of Home Properties of New York, Inc | Incorporated by reference to the Form 8-K filed by Home Properties of New York, Inc. on July 2, 1999, File No. 001-13136. |
| 4.3 | Amended and Restated By-Laws of Home Properties of New York, Inc. | Incorporated by reference to the Form 8-K filed by Home Properties of New York, Inc., on January 7, 1997, File No. 001-13136. |
| 4.4 | Amended and Restated By-Laws of Home Properties, Inc. | Incorporated by reference to Exhibit 3.1 to the Form 8-K filed by Home Properties of New York, Inc. on January 7, 1997, File No. 001-13136. |
| 4.5 | Articles of Amendment of the Articles of Incorporation of Home Properties of New York, Inc. | Incorporated by reference to Exhibit 3.11 to the Form 10-Q filed by Home Properties, Inc. on May 10, 2004, File No. 001-13136. |
| 4.6 | Amendment Number One to Amended and Restated Bylaws of Home Properties, Inc. | Incorporated by reference to Exhibit 3.12 to the Form 10-Q filed by Home Properties, Inc. on May 10, 2004, File No. 001-13136. |
| 4.7 | Home Properties, Inc. Second Amended and Restated Director Deferred Compensation Plan | Incorporated by reference to Exhibit B (Pages B-1 through B-4) to the Proxy Statement Filed by Home Properties, Inc. on March 31, 2005 |
| 5.1 | Opinion of Nixon Peabody LLP | Filed herewith. |
| 23.1 | Consent of Nixon Peabody LLP | Contained in opinion filed as Exhibit 5.1 to this Registration Statement. |
| 23.2 | Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm | Filed herewith |