

ARBOR REALTY TRUST INC

Form S-11/A

February 05, 2004

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As filed with the Securities and Exchange Commission on February 5, 2004

Registration No. 333-110472

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Amendment No. 2**

**to**

**FORM S-11**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**Arbor Realty Trust, Inc.**

*(Exact Name of Registrant as Specified in its Governing Instruments)*

**333 Earle Ovington Boulevard**

**Suite 900**

**Uniondale, New York 11553**

**(516) 832-8002**

*(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)*

**Frederick C. Herbst**

**Chief Financial Officer and Treasurer**

**Arbor Realty Trust, Inc.**

**333 Earle Ovington Boulevard**

**Suite 900**

**Uniondale, New York 11553**

**(516) 832-7408**

*(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)*

*Copies to:*

**David J. Goldschmidt**

**Skadden, Arps, Slate, Meagher & Flom LLP**

**Four Times Square**

**New York, New York 10036-6522**

**(212) 735-3000**

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this registration statement becomes effective.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box.

### CALCULATION OF REGISTRATION FEE

Title of Securities Being Registered	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$.01 per share	\$150,000,000(1)(2)	\$12,398.13(3)

- (1) Includes shares that the underwriters have the option to purchase from us to cover over-allotments, if any.
- (2) Estimated solely for the purpose of computing the registration fee in accordance with Rule 457(o) of the Securities Act of 1933, as amended.
- (3) Of this amount, \$11,670.23 was paid on \$144,254,970 of the proposed maximum aggregate offering price amount in connection with the initial filing of this registration statement on November 13, 2003. \$727.90 is being paid on the remaining \$5,745,030 in connection with this filing of the registration statement.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission acting, pursuant to said Section 8(a), may determine.**

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The information in this prospectus is not complete and may be changed or supplemented. The securities described in this prospectus cannot be sold until the registration statement that we have filed to cover the securities has become effective under the rules of the Securities and Exchange Commission. This prospectus is not an offer to sell the securities, nor is it a solicitation of an offer to buy the securities in any jurisdiction where an offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED FEBRUARY 5, 2004**

**PROSPECTUS**

# Arbor Realty Trust, Inc.

## Shares of Common Stock

This is our initial public offering. We are offering \_\_\_\_\_ shares of our common stock, par value \$.01 per share.

The selling stockholders are offering \_\_\_\_\_ shares of our common stock underlying units and \_\_\_\_\_ shares of our common stock issued upon exercise of warrants underlying units. The units were issued and sold to the selling stockholders on July 1, 2003 in transactions exempt from the registration requirements of the Securities Act of 1933 and each unit consisted of five shares of common stock and one warrant to purchase an additional share of common stock.

We expect the public offering price to be between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ per share. There has been no organized public market for our common stock.

We will not receive any proceeds from the sale of our common stock by the selling stockholders.

The underwriters have an option to purchase from us up to \_\_\_\_\_ additional shares of our common stock to cover over-allotment of shares.

We intend to apply to list our common stock on the New York Stock Exchange under the symbol \_\_\_\_\_.

**Investing in our common stock involves risks. See Risk Factors beginning on page 17 for a discussion of these risks.**

We have a limited operating history and may not operate successfully.

Historical consolidated financial statements included in this prospectus include expenses that would not have been incurred had we operated as a separate entity during the periods presented and exclude the management fees payable pursuant to the management agreement.

We are substantially controlled by Arbor Commercial Mortgage and its controlling equity owner, Mr. Kaufman.

We are dependent on our manager with whom we have conflicts of interest.

Our directors have approved very broad investment guidelines for our manager and do not approve each investment decision made by our manager.

We depend on key personnel with long standing business relationships, the loss of whom could threaten our ability to operate our business successfully.

We may be unable to generate sufficient revenue from operations to pay our operating expenses and to pay dividends to our stockholders.

If Arbor Commercial Mortgage ceases to be our manager, the financial institutions providing our credit facilities may not provide future financing to us.

If we do not qualify as a REIT or fail to remain qualified as a REIT, we will be subject to tax as a regular corporation and could face substantial tax liability.

There is no public market for our common stock, and there may be no market for our common stock after the completion of this offering.

Our charter generally does not permit ownership in excess of 9.6% of our common or capital stock, and attempts to acquire our capital stock in excess of these limits are ineffective without prior approval from our board of directors.

**Per Share                      Total**

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Public offering price	\$	\$
Underwriting discount	\$	\$
Proceeds, before expenses, to Arbor Realty Trust, Inc.	\$	\$
Proceeds, before expenses, to selling stockholders		\$

Delivery of the shares of common stock will be made on or about \_\_\_\_\_, 2004.

**Neither the Securities and Exchange Commission, any state securities commission, nor any other regulatory body has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2004

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LETTER FROM GRANT THORNTON LLP

CONSENT OF GRANT THORNTON LLP

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You should rely only on the information contained in this prospectus. Neither we nor the underwriters have not authorized anyone to provide you with different or additional information. This prospectus does not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this prospectus in any jurisdiction to or from any person to whom or from whom it is unlawful to make such offer or solicitation of an offer in such jurisdiction. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front cover of this prospectus. Neither the delivery of this prospectus nor any distribution of securities pursuant to this prospectus shall, under any circumstances, create any implication that there has been no change in the information set forth in this prospectus or in our affairs since the date of this prospectus.

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**PROSPECTUS SUMMARY**

*This summary highlights information more fully described elsewhere in this prospectus and contains the material terms of this offering. However, you should read this entire prospectus carefully before deciding to invest in our common stock. Unless otherwise mentioned or unless the context otherwise requires, all references in this prospectus to (a) we, us, our, or similar references mean Arbor Realty Trust, Inc. and its subsidiaries, including Arbor Realty Limited Partnership, our operating partnership, and (b) Arbor Commercial Mortgage, or our manager means Arbor Commercial Mortgage, LLC.*

**Arbor Realty Trust, Inc.**

We are a specialized real estate finance company investing in real estate related bridge and mezzanine loans, preferred equity and, in limited cases, discounted mortgage notes and other real estate related assets, which we collectively refer to as structured finance investments. Our objective is to maximize the difference between the yield on our investments and the cost of financing these investments to generate cash available for distribution, facilitate capital appreciation and maximize total return to our stockholders. We commenced operations in July 2003 and conduct substantially all of our operations through our operating partnership, Arbor Realty Limited Partnership. We intend to elect to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code and generally will not be subject to federal taxes on our income to the extent we distribute our income to our stockholders and maintain our qualification as a REIT.

We actively pursue lending and investment opportunities with property owners and developers who need interim financing until permanent financing can be obtained. Our structured finance investments generally have maturities of two to five years, depending on the type, have extension options when appropriate, and generally require a balloon payment of principal at maturity. Our financings typically range in size from \$1 million to \$25 million, and historically, our manager's spreads have ranged from 4.00% to 7.00% over 30-day LIBOR for mezzanine financings and 3.00% to 5.00% over 30-day LIBOR for bridge financings. Borrowers in the market for these types of loans include owners or developers who seek either to acquire or refurbish real estate or pay down debt and reposition a property for permanent financing. Our investment program emphasizes the following categories of real estate related activities:

*Bridge Financing* We offer bridge financing products to borrowers who are typically seeking short term capital to be used in an acquisition of property. The borrower has usually identified an undervalued asset that has been under-managed or is located in a recovering market. From the borrower's perspective, shorter term bridge financing is advantageous because it allows time to improve the property value through repositioning the property without encumbering it with restrictive long term debt. The bridge loans we make are secured by first lien mortgages on the property. Borrowers usually use the proceeds of a conventional mortgage loan to repay a bridge loan.

*Mezzanine Financing* We offer mezzanine loans, which are loans subordinate to a conventional first mortgage loan and senior to the borrower's equity in a transaction. Our mezzanine financing may take the form of pledges of ownership interests in entities that directly or indirectly control the real property or subordinated loans secured by second mortgages. We may also require additional collateral such as personal guarantees, letters of credit and/or additional collateral unrelated to the property.

*Preferred Equity Investments* We provide financing by making preferred equity investments in entities that directly or indirectly own real property. In cases where the terms of a first mortgage prohibit additional liens on the ownership entity, investments structured as preferred equity interests in the entity owning the property serve as viable financing substitutes. With preferred equity investments, we typically become a special limited partner or member in the ownership entity.

*Other Investments* We may engage in other investment activities, including the purchase of discounted first lien mortgage notes from other lenders and opportunistic investments including the acquisition of properties. Typically, these transactions, which may be conducted through taxable subsidiaries, are analyzed with the expectation that, upon property repositioning or renovation, they will be sold to achieve a significant return on invested capital.

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We borrow against or leverage our investments to the extent consistent with our investment guidelines in order to increase the size of our portfolio and potential returns to our stockholders. We generate profits to the extent interest and fee income exceed interest expense, loan losses and operating expenses. We also generate profits from gains on investments.

We are externally managed and advised by Arbor Commercial Mortgage. Our manager is a national commercial real estate finance company operating through 15 regional offices in the United States, specializing in debt and equity financing for multi-family and commercial real estate. We believe Arbor Commercial Mortgage's experience and reputation positions it to originate attractive investment opportunities for us. Our management agreement with Arbor Commercial Mortgage was developed to capitalize on synergies with Arbor Commercial Mortgage's origination infrastructure, existing business relationships and management expertise.

Arbor Commercial Mortgage has granted us a right of first refusal to pursue all structured finance investment opportunities identified by Arbor Commercial Mortgage. We have agreed not to pursue, and to allow Arbor Commercial Mortgage to pursue, any real estate opportunities other than structured finance transactions. This has historically included providing and servicing multi-family and commercial mortgage loans under Fannie Mae, Federal Housing Administration and conduit commercial lending programs, which we believe will offer customer relationship synergies to our business. Our portfolio currently contains loans and investments that we originated and loans and investments that we purchased from third parties or from affiliates.

We have a senior management team with significant industry experience. Mr. Ivan Kaufman, the chief executive officer of Arbor Commercial Mortgage, and Mr. Frederick Herbst, the chief financial officer of Arbor Commercial Mortgage, also serve as our chief executive officer and chief financial officer, respectively. Mr. Kaufman is the former co-founder and chairman of Arbor National Holdings.

### **Our Business Strategy**

We believe the financing of multi-family and commercial real estate offers significant growth opportunities that demand customized financing solutions.

Consolidation in the financial services industry has reduced the number of companies providing multi-family and commercial real estate financing products.

We believe this consolidation has led to a trend among remaining institutions to focus on larger, more standardized transactions.

The growth of a market for securitized commercial real estate pools has provided a new source of financing for real estate assets.

We believe we have the necessary levels of capital and financial flexibility to compete effectively in today's rapidly changing market. Our borrowers, who in the past relied on banks and life insurance companies as their primary source for commercial real estate financing, have benefited from our flexible underwriting standards. This flexibility has created significant demand for our bridge, mezzanine and other forms of innovative financing.

Our principal business objectives are to invest in bridge and mezzanine loans, preferred equity and other real estate related assets and actively manage our portfolio in order to generate cash available for distribution, facilitate capital appreciation and maximize total return to our stockholders. We believe we can achieve these objectives through the following business and growth strategies:

Provide customized financing;

Focus on a niche market in smaller loan balances;

Execute transactions rapidly;

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Manage and maintain credit quality;

Use Arbor Commercial Mortgage's relationships with existing borrowers and origination infrastructure;

Offer broader products and expand customer base; and

Leverage the experience of the executive officers and employees of Arbor Commercial Mortgage and us;

Our asset management group is integrated into the underwriting and structuring process for all transactions in order to enhance the credit quality of our originations before transactions close. After closing, our asset management group's experience in managing complex restructurings, refinancings and asset dispositions is used to improve the credit quality and yield on managed investments. We believe our asset management group's involvement in our credit underwriting process helps to mitigate investment risk after the closing of a transaction.

**Our Manager**

Arbor Commercial Mortgage is a national commercial real estate finance company founded in 1993 as a subsidiary of Arbor National Holdings, Inc., an originator and servicer of single-family residential mortgage loans. Our chief executive officer, Mr. Ivan Kaufman, is also Arbor Commercial Mortgage's chief executive officer and its controlling equity owner, and was the co-founder, chairman and majority shareholder of Arbor National Holdings. Under Mr. Kaufman's direction, Arbor National Holdings grew to 25 branches in 11 states and funded more than \$4 billion in loans in its last full year of operations. Arbor National Holdings became a public company in 1992 and was sold to BankAmerica in 1995.

In connection with the sale of Arbor National Holdings, Mr. Kaufman purchased its commercial mortgage lending operations and the rights to the Arbor name and retained a significant portion of Arbor National Holdings' senior management team. This senior management team has guided Arbor Commercial Mortgage's growth from a company originally capitalized with approximately \$8 million of equity value, including its partnership interest in Arbor Realty Limited Partnership, to approximately \$69 million of equity value as of September 30, 2003. Arbor Commercial Mortgage is now a full service provider of financial services to owners and developers of multi-family and commercial real estate properties. Arbor Commercial Mortgage has derived revenue from the origination for sale and servicing of government-sponsored and conduit mortgage loans for commercial and multi-family real estate properties as well as from the origination of structured finance loans and investments. Arbor Commercial Mortgage originated over \$600 million in new loans in 2002 and is currently servicing a portfolio with a principal balance of \$2.9 billion, including loans serviced for Arbor Realty Limited Partnership.

Our primary business will be investing in structured finance loans and investments. We do not intend to originate or service government sponsored investment grade assets, but we may invest in such assets in the future.

Arbor Commercial Mortgage's executive officers and employees have extensive experience in originating and managing structured commercial real estate investments. The senior management team has an average of over 20 years experience in the financial services industry. Arbor Commercial Mortgage currently has 130 employees spread among its corporate headquarters in Uniondale, New York, 14 other sales offices located throughout the United States and the servicing administration office in Buffalo, NY.

We and our operating partnership have entered into a management agreement with Arbor Commercial Mortgage pursuant to which Arbor Commercial Mortgage has agreed to provide us with structured finance investment opportunities and loan servicing as well as other services necessary to operate our business.

We pay our manager an annual base management fee based on the equity of our operating partnership, as further discussed below. The amount of the base management fee does not depend on the performance of the services provided by our manager or the types of assets it selects for our investment, but the value of our operating partnership's equity will be affected by the performance of these assets. We also pay our manager incentive compensation each fiscal quarter. We have paid \$587,734 in base management fees to Arbor

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Commercial Mortgage for management services rendered for the six months ended December 31, 2003. Our manager did not earn incentive compensation for the quarters ended September 30, 2003 or December 31, 2003.

The table summarizes the calculation of the base management fee, incentive compensation and other fees and expenses payable to our manager pursuant to the management agreement.

Type	Description and Method of Computation	Payable
Base management fee <sup>(1)</sup>	(1) 0.75% per annum of the first \$400 million of our operating partnership's equity, (2) 0.625% per annum of our operating partnership's equity between \$400 million and \$800 million, and (3) 0.50% per annum of our operating partnership's equity in excess of \$800 million.	Monthly in arrears in cash
Incentive compensation <sup>(2)</sup>	(1) 25% of the amount by which: (a) our operating partnership's funds from operations per operating partnership unit, adjusted for certain gains and losses, exceeds (b) the product of (x) 9.5% per annum or the Ten Year U.S. Treasury Rate plus 3.5%, whichever is greater, and (y) the weighted average of the book value of the net assets contributed by Arbor Commercial Mortgage to our operating partnership per operating partnership unit, \$15 (representing the offering price per share of our common stock in the original offering) <sup>(3)</sup> , the offering price per share of our common stock in any subsequent offerings and the issue price per operating partnership unit for subsequent contributions to our operating partnership, multiplied by (2) the weighted average of our operating partnership's outstanding operating partnership units.	Each fiscal quarter, with at least 25% paid in our common stock
Overhead expenses	Compensation of our independent directors, legal, accounting, due diligence tasks and other services that outside professionals perform for us.	Each fiscal quarter in cash
Origination fee income <sup>(4)</sup>	An amount equal to 100% of the origination fees paid by the borrower to us with respect to each bridge loan and mezzanine loan we originate, up to 1% of the loan's principal amount.	Upon closing of each loan
Termination fee <sup>(5)</sup>	If we terminate or elect not to renew the management agreement in order to manage our portfolio internally, we are required to pay a termination fee equal to the base management fee and incentive compensation for the 12-month period preceding the termination. If, without cause, we terminate or elect not to renew the management agreement for any other reason, including a change of control of us, we are required to pay a termination fee equal to two times the base management fee and incentive compensation paid for the 12-month period preceding the termination.	Upon termination

(1) For purposes of calculating the base management fee, our operating partnership's equity equals the month-end value computed in accordance with generally accepted accounting principles of total partners' equity in our operating partnership, plus or minus any unrealized gains, losses or other items that do not affect realized net income.

(2) At least 25% of the incentive compensation paid to our manager will be in the form of shares of our common stock, subject to ownership limitations in our charter. Beginning on January 1, 2004, the incentive compensation will be measured over a full fiscal year, subject to recalculation and potential reconciliation at the end of each fiscal year. We intend to pay our manager each installment of the incentive compensation within sixty (60) days following the last day of the fiscal quarter with respect to which such incentive compensation payment is payable.





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- (3) We allocated the \$75 offering price per unit to the five shares of common stock comprising each unit, resulting in an offering price of \$15 per share of common stock in the original offering. We did not allocate any value to the one warrant underlying each unit because the warrants have an initial exercise price of \$15 and they are not exercisable, detachable or freely tradable for an indeterminable period of time (i.e., until after the registration and listing of the common stock comprising the units on national securities exchange or The Nasdaq Stock Market).
- (4) 100% of the origination fees paid by the borrower in excess of 1% of the loan's principal amount are retained by us.
- (5) The management agreement has an initial term of two years and is renewable automatically for an additional one year period every year thereafter, unless terminated with six months' prior written notice.

**Our Corporate History**

On July 1, 2003, Arbor Commercial Mortgage, LLC contributed the majority of its structured finance portfolio to our operating partnership. These initial assets, consisting of 12 bridge loans, five mezzanine loans, five preferred equity investments and two other real estate related investments, were transferred at book value, which approximates fair value, that, at June 30, 2003, represented \$213.1 million in assets financed by \$169.2 million borrowed under Arbor Commercial Mortgage's credit facilities and supported by \$43.9 million in equity. Simultaneously with Arbor Commercial Mortgage's contribution of assets, we issued and sold 1,610,000 of our units in a private offering, which we refer to as the original offering.