

ARBOR REALTY TRUST INC
Form 424B5
June 06, 2012

The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, dated June 6, 2012

Prospectus Supplement to Prospectus dated June 3, 2010

Arbor Realty Trust, Inc.

3,500,000 Shares
Common Stock

This is a public offering of common stock of Arbor Realty Trust, Inc. We are offering 3,500,000 shares of our common stock, \$0.01 par value per share. Our common stock is listed on the New York Stock Exchange under the symbol "ABR." On June 5, 2012, the last reported sale price of our common stock was \$5.85 per share.

In order to assist us in complying with federal tax laws applicable to real estate investment trusts, or REITs, our charter generally prohibits any person from beneficially or constructively owning in excess of 5.0% of our common stock outstanding at any time, unless our board of directors grants the person a waiver from this charter provision.

Investing in our common stock involves a high degree of risk. See "Risk Factors" beginning on page 17 of our annual report on Form 10-K for the year ended December 31, 2011 and on page S-3 of this prospectus supplement.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus supplement and the accompanying prospectus. Any representation to the contrary is a criminal offense.

	Per Share	Total
Public offering price	\$	\$
Underwriting discounts and commissions	\$	\$
Proceeds, before expenses, to us	\$	\$

We have granted the underwriter the right to purchase up to an additional 525,000 shares of common stock within 30 days after the date of this prospectus supplement at the public offering price less the underwriting discount and commission to cover over allotments, if any.

The underwriter expects to deliver the shares of common stock on or about June , 2012.

Deutsche Bank Securities

The date of this Prospectus Supplement is June , 2012.

About This Prospectus Supplement

You may rely only on the information contained or incorporated by reference into this prospectus supplement and the accompanying prospectus and any free writing prospectus prepared by us. We have not, and the underwriter has not, authorized anyone to provide you with information that is different from or additional to that contained or incorporated by reference into this prospectus supplement, the accompanying prospectus and any free writing prospectus prepared by us. If anyone provides you with different or additional information, you should not rely on it. We are not, and the underwriter is not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus or any free writing prospectus prepared by us is accurate only as of their respective dates or on the date or dates that are specified in such documents. Our business, financial condition, liquidity, results of operations and prospects may have changed since those dates.

This document is in two parts. The first part is this prospectus supplement, which adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference into the accompanying prospectus. The second part is the accompanying prospectus, which gives more general information, some of which may not apply to this offering of common stock. This prospectus supplement adds, updates and changes information contained in the accompanying prospectus and the information incorporated by reference. To the extent the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or any document incorporated by reference, the information in this prospectus supplement shall control.

In this prospectus supplement and the accompanying prospectus, unless the context indicates otherwise, the words "we," "us," "our," "Arbor," "Company" and similar references mean Arbor Realty Trust, Inc. and its subsidiaries, including Arbor Realty Limited Partnership, our operating partnership, and Arbor Realty SR, Inc., its subsidiary, and the words "Arbor Commercial Mortgage" or "our manager" refer to Arbor Commercial Mortgage, LLC.

Cautionary Statement Regarding Forward-Looking Statements

The information contained in this prospectus supplement is not a complete description of our business or the risks associated with an investment in us. We urge you to carefully review and consider the various disclosures made by us in this prospectus supplement, including the documents incorporated by reference herein.

This prospectus supplement contains certain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements relate to, among other things, the operating performance of our investments and financing needs. Forward-looking statements are generally identifiable by use of forward-looking terminology such as "may," "will," "should," "potential," "intend," "expect," "endeavor," "seek," "anticipate," "estimate," "overestimate," "underestimate," "believe," "could," "project," "predict," "continue" or other similar words or expressions. Forward-looking statements are based on certain assumptions, discuss future expectations, describe future plans and strategies, contain projections of results of operations or of financial condition or state other forward-looking information. Our ability to predict results or the actual effect of future plans or strategies is inherently uncertain. Although we believe that the expectations reflected in such forward-looking statements are based on reasonable assumptions, our actual results and performance could differ materially from those set forth in the forward-looking statements. These forward-looking statements involve risks, uncertainties and other factors that may cause our actual results in future periods to differ materially from forecasted results. Factors that could have a material adverse effect on our operations and future prospects include, but are not limited to:

- changes in economic conditions generally and the real estate market specifically;
- adverse changes in the financing markets we access affecting our ability to finance our loan and investment portfolio;
 - changes in interest rates;
- the quality and size of the investment pipeline and the rate at which we can invest our cash;
- impairments in the value of the collateral underlying our loans and investments;
 - changes in the markets;
 - completion of pending investments;
 - the availability and cost of capital for future investments;
 - competition within the finance and real estate industries;
 - defaults on our investments;
- our ability to maintain our qualification as a REIT for federal income tax purposes and limitations imposed on our business by our status as a REIT;
- legislative and regulatory changes (including changes to laws governing REITs or applicable exemptions under the Investment Company Act of 1940); and
 - other risks detailed in our Annual Report on Form 10-K for the year ended December 31, 2011.

Readers are cautioned not to place undue reliance on any of these forward-looking statements, which reflect our management's views as of the date of the report containing such statements incorporated herein or as of the date of this prospectus supplement with respect to statements that are expressly stated herein. The factors noted above could cause our actual results to differ significantly from those contained in any forward-looking statement. For a discussion of our critical accounting policies, see "Management's Discussion and Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Significant Accounting Estimates and Critical Accounting Policies" in our Annual Report on Form 10-K for the year ended December 31, 2011.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. We are under no duty to update any of the forward-looking statements after the date of this prospectus supplement to conform these statements to actual results.

PROSPECTUS SUMMARY

This summary description of us, our manager and our business highlights selected information about us and our manager contained elsewhere in this prospectus supplement or the accompanying prospectus or the documents incorporated by reference herein or therein. This summary does not contain all of the information about us that you should consider before buying shares of our common stock. You should carefully read this entire prospectus supplement and the accompanying prospectus, including each of the documents incorporated herein and therein by reference, before making an investment decision.

Our Company

We are a specialized real estate finance company that invests in a diversified portfolio of structured finance assets in the multi-family and commercial real estate markets. We invest primarily in real estate-related bridge and mezzanine loans, including junior participating interests in first mortgages, preferred, and direct equity and in limited cases, discounted mortgage notes and other real estate-related assets, which we refer to collectively as structured finance investments. We also hold investments in mortgage-related securities and real property. Our principal business 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 are organized to qualify as a REIT for federal income tax purposes. A REIT is generally not subject to federal income tax on that portion of its REIT taxable income ("Taxable Income") that is distributed to its stockholders, provided that at least 90% of Taxable Income is distributed and certain other REIT qualification requirements are met. Certain of our assets that produce non-qualifying income are held in taxable REIT subsidiaries. Unlike other subsidiaries of a REIT, the income of a taxable REIT subsidiary is subject to federal and state income taxes.

We conduct substantially all of our operations and investing activities through our operating partnership, Arbor Realty Limited Partnership, and its subsidiaries, including Arbor Realty SR, Inc., a subsidiary REIT. We serve as the general partner of our operating partnership, and currently own 100% of its partnership interests.

We are externally managed and advised by Arbor Commercial Mortgage, LLC, a national commercial real estate finance company that specializes in debt and equity financing for multi-family and commercial real estate, pursuant to the terms of a management agreement.

We are a Maryland corporation formed in June 2003. Our principal executive offices are located at 333 Earle Ovington Boulevard, Suite 900, Uniondale, New York 11553. Our telephone number is (516) 506-4200. Our website is located at www.arborrealtytrust.com. The information contained on our website is not a part of this prospectus.

The Offering

Common stock we are offering 3,500,000 shares (plus up to an additional 525,000 shares that we may issue and sell upon the exercise of the underwriter's over-allotment option).

Common stock outstanding after this offering 27,749,225 shares(1)

Use of Proceeds We estimate that the net proceeds from this offering will be approximately \$ million after deducting the estimated expenses of this offering payable by us. We intend to use the net proceeds to make investments, to repurchase or pay liabilities and for general corporate purposes, including the repayment of indebtedness under our revolving credit agreement.

Ownership restrictions Our charter generally prohibits any person from beneficially or constructively owning in excess of 5.0% of our common stock outstanding at any time, unless our board of directors grants the person a waiver from this charter provision

New York Stock Exchange Symbol "ABR"

Risk Factors Investing in our common stock involves risks. See "Risk Factors" beginning on page 17 of our annual report on Form 10-K for the year ended December 31, 2011 and on page S-3 of this prospectus supplement.

(1) Assumes no exercise of the underwriter's option to purchase an additional shares of our common stock solely to cover over-allotments, if any. Does not include unexercised warrants to purchase 1,000,000 shares of our common stock at a weighted average exercise price of \$4.00 per share and 815,588 shares available for future issuance under our 2003 Stock Incentive Plan, as amended.

Risk Factors

Investment in our securities involves a high degree of risk. You should carefully consider the specific risks described below and under the caption "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011 which is incorporated by reference herein as well as the other information contained or incorporated by reference into this prospectus, before making an investment decision. Each of the risks described could materially adversely affect our business, financial condition, results of operations and prospects, and could result in a complete loss of your investment. For more information, see "Where You Can Find More Information" and "Incorporation of Certain Documents By Reference." In connection with the forward-looking statements that appear in this prospectus supplement, you should also carefully review the cautionary statements in the section of this prospectus supplement entitled "Cautionary Statement Regarding Forward-Looking Statements."

Risks Relating to Our Common Stock and this Offering

The price of our common stock may fluctuate and you could lose all or a significant part of your investment.

Volatility in the market price of our common stock may prevent you from being able to sell your shares at or above the price you paid. The market price of our common stock may also be influenced by many factors, some of which are beyond our control, including:

- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, joint ventures or capital commitments;
- variations in quarterly operating results;
- general economic conditions;
- war, terrorist acts and epidemic disease;
- future sales of our common stock or securities linked to our common stock;
- investor perceptions of us and the commercial real estate industry; and
- the failure of securities analysts to cover our common stock, or to the extent covered, changes in financial estimates by analysts or a downgrade of our stock or sector by analysts.

In addition, the stock market in general has experienced extreme price and volume fluctuations that may be unrelated or disproportionate to the operating performance of companies like us. These broad market and industry factors may materially reduce the market price of our common stock, regardless of our operating performance.

Future sales of common stock by our existing stockholders may cause our stock price to fall.

The market price of our common stock could decline as a result of sales by our existing and future stockholders, or the perception that such sales could occur, which might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate.

Our share price could decline as a result of this offering or if a large number of shares of our common stock or equity-related securities are sold in the future.

This offering will reduce the net book value per share of our common stock and may reduce the market price of our common stock. Sales of a substantial number of shares of our common stock could depress the market price of our common stock and impair our ability to raise capital through the sale of additional equity securities. This offering and any such future sales or issuances could dilute the ownership interests of stockholders, and we cannot predict the effect that this offering or future sales or issuances of our common stock or other equity-related securities would have on the market price of our common stock nor can we predict our future needs to fund our operations or balance sheet with future equity issuances.

Because we have broad discretion in how we use the proceeds from this offering, we may use the proceeds in ways in which you disagree.

We intend to use the net proceeds to make investments, to repurchase or pay liabilities and for general corporate purposes, including the repayment of indebtedness under our revolving credit agreement. See "Use of Proceeds." We have not allocated specific amounts of the net proceeds from this offering for any specific purpose. Accordingly, our management will have significant flexibility in applying the net proceeds of this offering. You will be relying on the judgment of our management with regard to the use of these net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately.

It is possible that the net proceeds will be invested in a way that does not yield a favorable, or any, return for us. The failure of our management to use such funds effectively could have a material adverse effect on our business, financial condition, operating results and cash flow.

Use of Proceeds

We estimate that the net proceeds we will receive from this offering will be approximately \$million (or \$ million in the event the underwriter exercises its option to purchase additional shares of common stock in full), in each case, after deducting the underwriting discount and estimated offering expenses payable by us. We expect to use the net proceeds to make investments relating to our business, to repurchase or pay liabilities and for general corporate purposes, including the repayment of indebtedness under our revolving credit agreement. On May 9, 2012, we entered into a \$15,000,000 revolving credit facility with a one year term. Borrowings under the facility bear interest at a rate of 8.00% per annum. We had outstanding borrowings under this facility of \$10,000,000 as of June 6, 2012.

Capitalization

The following table sets forth our cash and capitalization as of March 31, 2012, on an actual basis and as adjusted to give effect to our sale of common stock in this offering and the application of the estimated net proceeds as described under "Use of Proceeds." You should read this table in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Quarterly Report on Form 10-Q and our unaudited consolidated interim financial statements and related notes for the quarter ended March 31, 2012 included therein.

	As of March 31, 2012	
	As	
	Actual	Adjusted(1)
	(In thousands, except per share data)	
Assets:		
Cash and cash equivalents	\$53,455	\$
Debt:		
Debt(2)(3)	\$1,416,104	\$
Stockholders' Equity::		
Arbor Realty Trust, Inc. stockholders' equity:		
Preferred stock, \$0.01 par value per share: 100,000,000 shares authorized; no shares issued and outstanding	—	
Common stock, \$0.01 par value per share: 500,000,000 shares authorized; 26,803,737 shares issued, 24,152,970 shares outstanding	268	
Additional paid-in capital	456,112	
Treasury stock, at cost — 2,650,767 shares	(17,101)	
Retained earnings (accumulated deficit)	(216,858)	
Accumulated other comprehensive (loss)	(43,774)	
Total Arbor Realty Trust, Inc. stockholders' equity:	178,647	
Noncontrolling interest in consolidated entity	1,933	
Total equity	180,580	
Total capitalization	\$1,596,684	\$

(1) Assumes no exercise of the underwriter's over-allotment option to purchase up to an additional 525,000 shares of our common stock. Does not include unexercised warrants to purchase 1,000,000 shares of our common stock at a weighted average exercise price of \$4.00 per share and 815,588 shares available for future issuance under our 2003 Stock Incentive Plan, as amended.

(2) Includes \$56,366,000 repurchase agreement, \$50,000,000 credit facility, \$970,706,271 collateralized debt obligations, \$158,382,950 junior subordinated notes, \$85,457,708 notes payable, \$53,751,004 mortgage note

payable — real estate owned and \$41,440,000 mortgage note payable — held-for-sale.

(3) On May 9, 2012, we entered into a \$15,000,000 revolving credit facility with a one year term. We had outstanding borrowings under this facility of \$10,000,000 as of June 6, 2012.

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Additional Federal Income Tax Considerations

The following discussion supplements the summary of material federal income tax considerations as contained in the accompanying prospectus. For purposes of this section under the heading “Additional Federal Income Tax Considerations,” references to “Arbor Realty,” “we,” “our” and “us” mean only Arbor Realty Trust, Inc. and not its subsidiaries or other lower-tier entities, except as otherwise required by the context. However, our indirect subsidiary, Arbor Realty SR, Inc. (“SR Inc.”), like Arbor Realty, has also elected to be taxed as a REIT. To the extent that the discussion below relates to the tax requirements for, and consequences of, qualifying as a REIT, it also applies to SR Inc.’s election to be taxed as a REIT.

In connection with this offering of our common stock, we expect to receive an opinion of the law firm of Skadden, Arps, Slate, Meagher & Flom LLP to the effect that, commencing with Arbor Realty’s initial taxable year ended December 31, 2003, Arbor Realty was organized in conformity with the requirements for qualification as a REIT under the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), and its actual method of operation through the date hereof has enabled, and its proposed method of operation will enable, it to meet the requirements for qualification and taxation as a REIT. It must be emphasized that an opinion of counsel is expressed as of the date given, is based on various assumptions relating to the organization and operation of Arbor Realty and its affiliates, and is conditioned upon representations and covenants made by the management of Arbor Realty and affiliated entities regarding their organization, assets and the past, present and future conduct of their business operations. Qualification and taxation as a REIT depends on our ability to meet, on a continuing basis, through actual operating results, distribution levels, and diversity of stock ownership, various qualification requirements imposed upon REITs by the Internal Revenue Code and the Treasury regulations issued thereunder, including requirements relating to the nature and composition of our assets and income. Our ability to comply with the REIT asset requirements also depends, in part, upon the fair market values of assets that we own directly or indirectly. Such values may not be susceptible to a precise determination.

Expiration of Reduced Tax Rates

Reduced rates of tax applicable to capital gain income, the top marginal rate for which is currently as low as 15%, are scheduled to expire for taxable years beginning after December 31, 2012 (at which point the top marginal rate on such income would generally be 20%). It is presently unclear whether the current rates will be extended, or whether the tax treatment of capital gains will otherwise be altered through the legislative process.

Withholding Rules Pursuant to the Foreign Account Tax Compliance Act

After December 31, 2013, withholding at a rate of 30% will be required on dividends in respect of, and after December 31, 2014, withholding at a rate of 30% will be required on gross proceeds from the sale of, shares of common stock held by or through certain foreign financial institutions (including investment funds), unless such institution enters into an agreement with the Secretary of the Treasury to report, on an annual basis, information with respect to shares in, and accounts maintained by, the institution to the extent such shares or accounts are held by certain U.S. persons or by certain non-U.S. entities that are wholly or partially owned by U.S. persons. Accordingly, the entity through which our shares are held will affect the determination of whether such withholding is required. Similarly, after December 31, 2013, dividends in respect of, and after December 31, 2014, gross proceeds from the sale of, our shares held by an investor that is a non-financial non-U.S. entity will be subject to withholding at a rate of 30%, unless such entity either (i) certifies to us that such entity does not have any “substantial U.S. owners” or (ii) provides certain information regarding the entity’s “substantial U.S. owners,” which we will in turn provide to the Secretary of the Treasury. U.S. stockholders intending to hold our common stock through foreign financial institutions and non-U.S. stockholders are encouraged to consult with their tax advisers regarding the possible implications of these rules on their investment in our common stock.

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Treatment of Loan Modifications and Distressed Debt by REITs

The Internal Revenue Service ("IRS") recently issued Revenue Procedure 2011-16, which contains provisions that are relevant where a REIT holds a mortgage loan which is modified in a transaction that is treated as the issuance of a new loan. In general, a modified loan will not be treated as less than fully secured by real property, and therefore will not give rise to interest income that does not qualify for purposes of the 75% gross income test or cause a portion of the loan to be a non-qualifying asset for purposes of the 75% asset test applicable to REITs, provided that the value of the real estate collateral was at least as great as the amount of the loan at the time it was originally acquired by the REIT and the modification was occasioned by default or we reasonably believed at the time of the modification that there was a significant risk of default and the modified loan presented a substantially reduced risk of default. Moreover, for purposes of the REIT asset tests, a loan, whether or not it is modified, will generally not be treated as less than fully secured by real property provided that the value of the real estate collateral is at least as great as the value of the loan at the time that it is originally acquired by the REIT.

Distributions in Stock or Cash

Prior temporary guidance by the IRS, as summarized in the accompanying prospectus, permitted publicly traded REITs to pay dividends in either stock or cash, at the election of stockholders, with the aggregate amount of cash capped at not less than 10% of the total distribution, and with the distribution eligible for the deduction for dividends paid. This temporary guidance generally does not apply to any dividends paid in 2012 and future taxable years. Accordingly, it is unclear whether and to what extent we will be able to pay taxable dividends payable in cash and stock in 2012 and later years. The accompanying prospectus also describes a contractual obligation by us to pay any dividends in stock to the maximum permitted under the tax rules governing REITs. This contractual obligation has also terminated, and our board of directors recently declared a dividend payable in cash. We have no current intention to make a taxable dividend payable in our stock.

Income Tests

As described in the accompanying prospectus, in order to maintain our qualification as a REIT, we must satisfy the 75% and 95% gross income requirements each year. In 2009 and 2010, Arbor Realty did not report any gross income because SR Inc. did not pay any dividends on its common stock. Although there are no authorities addressing this situation, we do not believe that Arbor Realty's lack of gross income will adversely affect its qualification as a REIT for federal income tax purposes. No assurance can be given, however, that the IRS will not assert a contrary position. For a discussion of the consequences of Arbor Realty failing to qualify as a REIT, see "Federal Income Tax Considerations – Taxation of Arbor Realty" in the accompanying prospectus.

SR Inc.'s Ability to Offset Deferred Cancellation of Indebtedness Income with Net Operating Loss Carryforwards

SR Inc. has elected to defer the recognition of approximately \$306 million of cancellation of indebtedness ("COD") income under section 108(i) of the Internal Revenue Code. The deferred COD income will be recognized ratably over the 2014 through 2018 taxable years. SR Inc. has also generated approximately \$179 million of net operating loss ("NOL") carryforwards that may be available to offset the deferred COD income. However, SR Inc.'s ability to utilize NOL carryforwards to offset deferred COD or other income will be significantly limited in the event that SR Inc. undergoes, or has undergone, an "ownership change" within the meaning of Section 382 of the Internal Revenue Code. In general, an "ownership change" occurs with respect to a corporation if 5% shareholders increase their aggregate ownership interest in the corporation by more than 50 percentage points within a prescribed testing period (generally three years). We do not believe that SR Inc. has experienced an "ownership change" to date, and we believe that the 5% ownership limit applicable to the stock of Arbor Realty reduces the likelihood