

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): **October 7, 2021**

Arbor Realty Trust, Inc.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

MARYLAND
(STATE OF INCORPORATION)

001-32136
(COMMISSION FILE NUMBER)

20-0057959
(IRS EMPLOYER ID. NUMBER)

333 Earle Ovington Boulevard, Suite 900
Uniondale, New York
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

11553
(ZIP CODE)

(516) 506-4200
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

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))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01 per share	ABR	New York Stock Exchange
Preferred Stock, 6.375% Series D Cumulative Redeemable, par value \$0.01 per share	ABR-PD	New York Stock Exchange
Preferred Stock, 6.25% Series E Cumulative Redeemable, par value \$0.01 per share	ABR-PE	New York Stock Exchange
Preferred Stock, 6.25% Series F Fixed-to-Floating Rate Cumulative Redeemable, par value \$0.01 per share	ABR-PF	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 3.03 Material Modification to Rights of Security Holders.

On October 7, 2021, Arbor Realty Trust, Inc. (the “Company”) filed Articles Supplementary (the “Articles Supplementary”) with the Maryland State Department of Assessments and Taxation to designate 8,050,000 shares of the Company’s authorized but unissued preferred stock, \$0.01 par value per share, as shares of 6.25% Series F Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock, with the powers, designations, preferences and other rights as set forth therein (the “Series F Preferred Stock”). The Articles Supplementary became effective upon filing on October 7, 2021.

The Articles Supplementary provide that the Company will pay, when and if authorized by the Board of Directors of the Company, cumulative cash dividends (i) from and including the original issue date to, but excluding, October 30, 2026 at a fixed rate equal to 6.25% per annum of the \$25.00 per share liquidation preference (equivalent to \$1.5625 per annum per share) and (ii) from and including October 30, 2026 at a floating rate equal to a benchmark rate (which is expected to be Three-Month Term SOFR (as defined in the Articles Supplementary)) plus a spread of 5.442% per annum of the \$25.00 per share liquidation preference (the “Floating Rate”); provided, however, that in no event shall the Floating Rate be lower than 6.125%. Dividends will be paid in arrears, on the 30th day of January, April, July and October of each year (provided that if any dividend payment date is not a business day, then the dividend which would otherwise have been payable on that dividend payment date may be paid on the next succeeding business day), commencing on January 30, 2022.

The Series F Preferred Stock is not redeemable by the Company prior to October 12, 2026 except under circumstances intended to preserve the Company’s qualification as a real estate investment trust (“REIT”) and except upon the occurrence of a Change of Control (as defined in the Articles Supplementary). On and after October 12, 2026, the Company may, at its option, redeem the Series F Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price equal to \$25.00 per share, plus any accumulated and unpaid dividends to, but not including, the date fixed for redemption.

In addition, upon the occurrence of a Change of Control, the Company may, at its option, redeem the Series F Preferred Stock, in whole or in part on, or within 120 days after, the first date on which such Change of Control occurred, for cash at a redemption price of \$25.00 per share, plus any accumulated and unpaid dividends to, but not including, the date fixed for redemption.

The Series F Preferred Stock has no stated maturity, is not subject to any sinking fund or mandatory redemption and will remain outstanding indefinitely unless repurchased or redeemed by the Company or converted into the Company’s common stock in connection with a Change of Control by the holders of Series F Preferred Stock. Upon the occurrence of a Change of Control, each holder of Series F Preferred Stock will have the right (unless the Company has exercised its right to redeem the Series F Preferred Stock in whole or in part, as described above, prior to the Change of Control Conversion Date (as defined in the Articles Supplementary)) to convert some or all of the Series F Preferred Stock held by such holder on the Change of Control Conversion Date into a number of shares of the Company’s common stock determined by a formula, in each case, on the terms and subject to the conditions described in the Articles Supplementary, including provisions for the receipt, under specified circumstances, of alternative consideration.

There are restrictions on ownership of the Series F Preferred Stock intended to preserve the Company’s qualification as a REIT. Except under limited circumstances, holders of the Series F Preferred Stock have no voting rights.

A copy of the Articles Supplementary and form of Series F Preferred Stock Certificate are filed as Exhibits 3.1 and 4.1, respectively, to this report, and the information in the Articles Supplementary is incorporated into this Item 3.03 by reference. The description of the terms of the Articles Supplementary in this Item 3.03 is qualified in its entirety by reference to Exhibit 3.1.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information set forth above under Item 3.03 of this report is hereby incorporated by reference into this Item 5.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit
3.1	Articles Supplementary designating 6.25% Series F Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock (incorporated by reference to Exhibit 3.6 of the Company’s Registration Statement on Form 8-A, filed with the SEC on October 12, 2021)

<u>4.1</u>	<u>Specimen 6.25% Series F Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock Certificate (incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form 8-A, filed with the SEC on October 12, 2021)</u>
<u>5.1</u>	<u>Opinion of Venable LLP with respect to the legality of the shares.</u>
<u>8.1</u>	<u>Opinion of Skadden, Arps, Slate, Meagher & Flom LLP with respect to tax matters.</u>
<u>23.1</u>	<u>Consent of Venable LLP (included in Exhibit 5.1)</u>
<u>23.2</u>	<u>Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 8.1)</u>
104	The cover page of this Current Report on Form 8-K, formatted in Inline XBRL

SIGNATURE

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

ARBOR REALTY TRUST, INC.

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

Date: October 12, 2021



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October 12, 2021

Arbor Realty Trust, Inc.
333 Earle Ovington Boulevard, Suite 900
Uniondale, NY 11553

Re: Registration Statement on Form S-3 (File No. 333-242377)

Ladies and Gentlemen:

We have served as Maryland counsel to Arbor Realty Trust, Inc., a Maryland corporation (the "Company"), in connection with certain matters of Maryland law arising out of the sale and issuance of 8,050,000 shares (the "Shares") of the Company's 6.25% Series F Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock, \$0.01 par value per share (the "Series F Preferred Stock"), covered by the above-referenced Registration Statement, and all amendments related thereto (the "Registration Statement"), filed by the Company with the U.S. Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act"). The Shares are to be issued in an underwritten public offering (the "Offering") pursuant to the Prospectus, dated August 7, 2020, which forms a part of the Registration Statement (the "Prospectus"), and a Prospectus Supplement, dated October 4, 2021 (the "Prospectus Supplement").

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the "Documents"):

1. The Registration Statement and the Prospectus included therein;
 2. The Prospectus Supplement;
 3. The charter of the Company (the "Charter"), including the Articles Supplementary setting forth the terms of the Series F Preferred Stock (the "Articles Supplementary"), certified by the State Department of Assessments and Taxation of Maryland (the "SDAT");
 4. The Bylaws of the Company, certified as of the date hereof by an officer of the Company;
 5. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;
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6. Resolutions adopted by the Board of Directors of the Company (the “Resolutions”), and by a duly authorized committee thereof, authorizing the registration, sale and issuance of the Shares, certified as of the date hereof by an officer of the Company;

7. A certificate executed by an officer of the Company, dated as of the date hereof; and

8. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.

2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.

3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party’s obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.

4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.

5. The Shares will not be issued or transferred in violation of the restrictions on transfer and ownership of shares of stock of the Company set forth in Article VII of the Charter or Section 12 of the Articles Supplementary.

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Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a corporation duly incorporated and existing under the laws of the State of Maryland and is in good standing with the SDAT.
2. The issuance of the Shares has been duly authorized and, when and if issued and delivered against payment therefor in accordance with the Resolutions, the Registration Statement and the Prospectus Supplement, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning federal law or any other state law. We express no opinion as to the applicability or effect of federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of any judicial decision which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the Offering (the "Current Report"). We hereby consent to the filing of this opinion as an exhibit to the Current Report and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,

/s/ Venable LLP

[LETTERHEAD OF SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP]

October 12, 2021

Arbor Realty Trust, Inc.
333 Earle Ovington Blvd – Suite 900
Uniondale, NY 11553

Re: Certain U.S. Federal Income Tax Matters

Ladies and Gentlemen:

You have requested our opinion concerning certain U.S. federal income tax considerations in connection with the offering (the “Offering”) by Arbor Realty Trust, Inc., a Maryland corporation (“ART”), of ART’s 6.25% Series F Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the “Series F Preferred Stock”), pursuant to a registration statement on Form S-3ASR (File No. 333-242377) filed on August 7, 2020 with the Securities and Exchange Commission under the Securities Act of 1933, as amended through the date hereof (the “Registration Statement”).

In connection with this opinion, we have examined and relied on originals or copies, certified or otherwise identified to our satisfaction, of:

- (a) the Registration Statement;
 - (b) the prospectus, dated August 7, 2020 (the “Base Prospectus”), which forms a part of and is included in the Registration Statement;
 - (c) the preliminary prospectus supplement, dated October 4, 2021 (together with the Base Prospectus, the “Preliminary Prospectus”);
 - (d) the prospectus supplement, dated October 4, 2021 (the “Prospectus Supplement” and, together with the Preliminary Prospectus, the “Prospectus”); and
 - (e) such other documentation and information provided by ART as we have deemed necessary or appropriate as a basis for the opinion set forth herein.
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In addition, you have provided us with, and we are relying upon, certificates (the “Officers’ Certificates”) containing certain factual representations and covenants of officers of ART and of Arbor Realty SR, Inc., a Maryland corporation that is an indirect majority-owned subsidiary of ART (“SR Inc.”), which relate to, among other things, the actual and proposed operations of ART and SR Inc., and each of the entities in which ART and SR Inc. hold or have held a direct or indirect interest (collectively, the “Company”). For purposes of this opinion, although we are not aware of any facts inconsistent with the statements, representations, and covenants in the Officers’ Certificates, the Registration Statement, or the Prospectus, we have not independently verified the facts, statements, representations and covenants set forth in the Officers’ Certificates, the Registration Statement, the Prospectus, or in any other document. In particular, we note that the Company may engage in transactions in connection with which we have not provided legal advice and have not reviewed, and of which we may be unaware. We have, consequently, assumed and relied on your and SR Inc.’s representations that the statements, representations, and covenants presented in the Officers’ Certificates, the Registration Statement, and the Prospectus accurately and completely describe all material facts with respect to such statements, representations, and covenants. We have assumed that all such facts, statements, representations and covenants are true without regard to any qualification as to knowledge, belief, intent, materiality, or otherwise. Our opinion is conditioned on the continuing accuracy and completeness of such facts, statements, representations and covenants. Any material change or inaccuracy in the facts, statements, representations, and covenants referred to, set forth, or assumed herein or in the Officers’ Certificates may affect our conclusions set forth herein. Additionally, we have relied, with your permission, on (i) certain opinions rendered by Cadwalader, Wickersham & Taft LLP, Clifford Chance US LLP, and Sidley Austin LLP to the effect that certain notes issued by the Company will be treated as indebtedness for U.S. federal income tax purposes, and (ii) an opinion rendered by Hunton & Williams LLP relating to the treatment of certain participation interests in excess servicing fees, as described in the Registration Statement.

In our review of certain documents in connection with our opinion as expressed below, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed, photostatic, or electronic copies, and the authenticity of the originals of such copies. Where documents have been provided to us in draft form, we have assumed that the final executed versions of such documents will not differ materially from such drafts.

Our opinion is also based on the correctness of the following assumptions: (i) ART and each of the entities comprising the Company has been and will continue to be operated in accordance with the laws of the jurisdictions in which they were formed and in the manner described in the relevant organizational documents, (ii) there will be no changes in the applicable laws of the State of Maryland or of any other jurisdiction under the laws of which any of the entities comprising the Company have been formed, and (iii) each of the written agreements to which the Company is a party has been and will be implemented, construed and enforced in accordance with its terms.

In rendering our opinion, we have considered and relied upon the Internal Revenue Code of 1986, as amended (the “Code”), the regulations promulgated thereunder (the “Regulations”), and administrative rulings and other interpretations of the Code and the Regulations by the courts and the Internal Revenue Service (“IRS”), all as they exist at the date hereof. It should be noted that the Code, the Regulations, judicial decisions, and administrative interpretations are subject to change or differing interpretation at any time and, in some circumstances, with retroactive effect. A material change that is made after the date hereof in any of the foregoing bases for our opinion could affect our conclusions set forth herein. There can be no assurance, moreover, that our opinion will be accepted by the IRS, or, if challenged, by a court.

Based on and subject to the foregoing, we are of the opinion that commencing with ART's taxable year ended December 31, 2003, and SR Inc.'s taxable year ended December 31, 2005, each of ART and SR Inc. has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a "REIT") under the Code, and each of ART's and SR Inc.'s current and proposed method of operation, as described in the Registration Statement, will enable ART and SR Inc. to continue to meet the requirements for qualification and taxation as REITs under the Code.

As noted in the Registration Statement, ART's and SR Inc.'s qualification and taxation as a REIT depend upon their ability to meet, through actual operating results, certain requirements relating to the sources of their income, the nature of their assets, their distribution levels and the diversity of their stock ownership, and various other qualification tests imposed under the Code, the results of which are not reviewed by us. Accordingly, no assurance can be given that the actual results of the operation of ART or SR Inc. for any one taxable year will satisfy the requirements for taxation as a REIT under the Code.

We express no opinion on any issue relating to ART, SR Inc., or any investment therein, other than as expressly stated above.

This opinion is expressed as of the date hereof, and we are under no obligation to supplement or revise our opinion to reflect any legal developments or factual matters arising subsequent to the date hereof or the impact of any information, document, certificate, record, statement, representation, covenant, or assumption relied upon herein that becomes incorrect or untrue. This opinion is furnished to you in connection with the filing of the Registration Statement. We consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to Skadden, Arps, Slate, Meagher & Flom LLP under the headings "Supplement to U.S. Federal Income Tax Considerations" and "Legal Matters" in the Prospectus. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission.

Very truly yours,
/s/ Skadden, Arps, Slate, Meagher & Flom LLP
