

AVALONBAY COMMUNITIES INC

Form 10-K/A

March 15, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2018

Commission file number 1-12672

AVALONBAY COMMUNITIES, INC.

(Exact name of registrant as specified in its charter)

Maryland 77-0404318

(State or other jurisdiction of (I.R.S. Employer

incorporation or organization) Identification No.)

Ballston Tower

671 N. Glebe Rd, Suite 800

Arlington, Virginia 22203

(Address of principal executive offices, including zip code)

(703) 329-6300

(Registrant's telephone number, including area code)

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

(Title of each class)	(Name of each exchange on which registered)
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Common Stock, par value \$.01 per share	New York Stock Exchange
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Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve (12) months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one)

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Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting company ☐

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes ☐ No ☒

The aggregate market value of the registrant's Common Stock, par value \$.01 per share, held by nonaffiliates of the registrant, as of June 30, 2018 was \$23,656,288,475.

The number of shares of the registrant's Common Stock, par value \$.01 per share, outstanding as of January 31, 2019 was 138,508,567.

Documents Incorporated by Reference

Portions of AvalonBay Communities, Inc.'s Proxy Statement for the 2019 annual meeting of stockholders, a definitive copy of which will be filed with the SEC within 120 days after the year end of the year covered by this Form 10-K, are incorporated by reference herein as portions of Part III of this Form 10-K.

EXPLANATORY NOTE

This Amendment No. 1 to the Annual Report on Form 10-K of AvalonBay Communities, Inc. (the “Company”) for the year ended December 31, 2018 as filed with the Securities and Exchange Commission on February 22, 2019 (the “Original Form 10-K”) is being filed for the sole purpose of updating the exhibits to the Original Form 10-K to include two previously-filed exhibits that were inadvertently omitted from the exhibit list for the Original Form 10-K as a result of an administrative error.

Except as otherwise expressly noted herein, this Amendment No. 1 does not modify or update in any way the disclosures in the Original Form 10-K, including the Company’s audited financial statements and related schedules and other disclosures, or the exhibits to the Original Form 10-K, nor does it reflect events occurring after the date and time of the filing of the Original Form 10-K. Accordingly, this Amendment No. 1 should be read in conjunction with the Original Form 10-K.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULE

15(a)(1) Financial Statements

See the Original Form 10-K

15(a)(2) Financial Statement Schedule

See the Original Form 10-K

15(a)(3) Exhibits

Exhibit No. Description

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|---------|--|
| 3(i).1 | — <u>Articles of Amendment and Restatement of Articles of Incorporation of the Company, dated as of June 4, 1998. (Incorporated by reference to Exhibit 3(i).1 to Form 10-K of the Company filed March 1, 2007.)</u> |
| 3(i).2 | — <u>Articles of Amendment, dated as of October 2, 1998. (Incorporated by reference to Exhibit 3(i).2 to Form 10-K of the Company filed March 1, 2007.)</u> |
| 3(i).3 | — <u>Articles of Amendment, dated as of May 22, 2013. (Incorporated by reference to Exhibit 3(i).3 to Form 8-K of the Company filed May 22, 2013.)</u> |
| 3(ii).1 | — <u>Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on November 12, 2015. (Incorporated by reference to Exhibit 3(ii).1 to Form 10-K of the Company filed February 26, 2016.)</u> |
| 3(ii).2 | — <u>Amendment to Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on February 16, 2017. (Incorporated by reference to Exhibit 3.2 to Form 8-K of the Company filed February 21, 2017.)</u> |
| 3(ii).3 | — <u>Second Amendment to Amended and Restated Bylaws of AvalonBay Communities, Inc., dated November 9, 2017. (Incorporated by reference to Exhibit 3.2 to Form 8-K of the Company filed November 13, 2017.)</u> |
| 4.1 | — <u>Indenture for Senior Debt Securities, dated as of January 16, 1998, between the Company and State Street Bank and Trust Company, as Trustee. (Incorporated by reference to Exhibit 4.1 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)</u> |
| 4.2 | — <u>Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 between the Company and State Street Bank and Trust Company, as Trustee. (Incorporated by reference to Exhibit 4.4 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)</u> |
| 4.3 | — <u>Fourth Supplemental Indenture, dated as of September 18, 2006, between the Company and U.S. Bank National Association as Trustee. (Incorporated by reference to Exhibit 4.5 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)</u> |
| 4.4 | — <u>Fifth Supplemental Indenture, dated as of November 21, 2014, between the Company and the Bank of New York Mellon, as Trustee. (Incorporated by reference to Exhibit 4.1 to Form 8-K of the Company filed November 21, 2014.)</u> |
| 4.5 | — <u>Indenture for Debt Securities, dated as of February 23, 2018, between the Company and the Bank of New York, as Trustee (Incorporated by reference to Exhibit 4.1 to Registration Statement on Form S-3 of the Company (File No. 333-223183), filed February 23, 2018.)</u> |
| 4.6 | — <u>First Supplemental Indenture, dated as March 26, 2018, between the Company and the Bank of New York Mellon, as Trustee. (Incorporated by reference to Exhibit 4.8 to Form 10-Q of the Company filed May 4, 2018.)</u> |
| 4.7 | — <u>Second Supplemental Indenture, dated as of May 29, 2018, between the Company and the Bank of New York Mellon, as Trustee. (Incorporated by reference to Exhibit 4.3 to Form 8-K of the Company, filed May 29, 2018.)</u> |

- 4.8 ~~Dividend Reinvestment and Stock Purchase Plan of the Company. (Incorporated by reference to the prospectus contained in the Registration Statement on Form S-3DPOS of the Company (File No. 333-87063), filed February 23, 2018.)~~
- 10.1+ ~~Endorsement Split Dollar Agreements and Amendments thereto with Messrs. Naughton and Horey. (Incorporated by reference to Exhibit 10.8 to Form 10-K of the Company filed February 23, 2011.)~~
- 10.2+ ~~Form of Amendment to Endorsement Split Dollar Agreement with Messrs. Naughton and Horey. (Incorporated by reference to Exhibit 10.5 to Form 10-K of the Company filed March 2, 2009.)~~
- 10.3+ AvalonBay Communities, Inc. Second Amended and Restated 2009 Equity Incentive Plan. (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed August 4, 2017.)
- 10.4+ ~~First Amendment to AvalonBay Communities, Inc. Second Amended and Restated 2009 Equity Incentive Plan, dated February 14, 2019. (Incorporated by reference to Exhibit 10.4 to Form 10-K of the Company filed February 22, 2019.)~~
- 10.5+ ~~Form of Stock Grant and Restricted Stock Agreement for use with officers and associates. (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed February 22, 2018.)~~
- 10.6+ ~~Form of Incentive Stock Option/Non-Qualified Stock Option Agreement for use with officers and associates. (Incorporated by reference to Exhibit 10.2 to Form 8-K of the Company filed February 22, 2018.)~~
- 10.7+ ~~2018 Amended and Restated Directors Deferred Compensation Program. (Incorporated by reference to Exhibit 10.4 to Form 8-K of the Company filed February 22, 2018.)~~
- 10.8+ ~~Form of Director Restricted Stock Agreement. (Incorporated by reference to Exhibit 10.5 to Form 8-K of the Company filed February 22, 2018.)~~
- 10.9+ ~~Form of Director Restricted Unit Agreement (deferred stock award). (Incorporated by reference to Exhibit 10.6 of Form 8-K of the Company filed February 22, 2018.)~~
- 10.10+ ~~Form of Agreement for Grant of Performance-Based Restricted Stock Units with attached Award Terms (subject to changes in weightings, target levels of achievement and metrics used in the award agreement.) (Incorporated by reference to Exhibit 10.10 to Form 10-K of the Company filed February 22, 2019.)~~
- 10.11+ ~~Form of Indemnity Agreement between the Company and its Directors. (Incorporated by reference to Exhibit 10.19 to Form 10-K of the Company filed February 19, 2015.)~~
- 10.12+ ~~The Company's Officer Severance Plan, as amended and restated on February 11, 2016. (Incorporated by reference to Exhibit 99.2 to Form 8-K of the Company filed February 16, 2016.)~~
- 10.13 ~~Fourth Amended and Restated Revolving Loan Agreement, dated as of January 14, 2016, among the Company, as Borrower, Bank of America, N.A., as administrative agent, an issuing bank and a bank, JPMorgan Chase Bank, N.A., as an issuing bank, a bank and a syndication agent, Wells Fargo Bank, N.A., as an issuing bank, a bank and a syndication agent, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Wells Fargo Securities, LLC, as joint bookrunners and joint lead arrangers, and a syndicate of other financial institutions, serving as banks. (Incorporated by reference to Exhibit 1.1 to Form 8-K/A of the Company filed January 15, 2016.)~~
- 10.14+ ~~Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of January 1, 2011. (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed August 6, 2010.)~~
- 10.15+ ~~First Amendment to Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of November 7, 2011. (Incorporated by reference to Exhibit 10.28 to Form 10-K of the Company filed February 24, 2017.)~~
- 10.16+ ~~Second Amendment to Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of November 15, 2012. (Incorporated by reference to Exhibit 10.29 to Form 10-K of the Company filed February 24, 2017.)~~

10.17 Archstone Residual JV, LLC Limited Liability Company Agreement. (Incorporated by reference to
Exhibit 10.3 to Form 8-K of the Company filed March 5, 2013.)

- 10.18 Archstone Parallel Residual JV, LLC Limited Liability Company Agreement. (Incorporated by reference to Exhibit 10.4 to Form 8-K of the Company filed March 5, 2013.)
- 10.19 Archstone Parallel Residual JV 2, LLC Limited Liability Company Agreement. (Incorporated by reference to Exhibit 10.5 to Form 8-K of the Company filed March 5, 2013.)
- 10.20 Legacy Holdings JV, LLC Limited Liability Company Agreement. (Incorporated by reference to Exhibit 10.6 to Form 8-K of the Company filed March 5, 2013.)
- 10.21 Term Loan Agreement, dated February 28, 2017, among the Company, as Borrower, PNC Bank, National Association, as Administrative Agent and a bank, The Bank of New York Mellon and Sun Trust Bank, each as Syndication Agent and a bank, and a syndicate of other financial institutions serving as banks. (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed February 28, 2017.)
- 21.1 Schedule of Subsidiaries of the Company. (Incorporated by reference to Exhibit 21.1 to Form 10-K of the Company filed February 22, 2019.)
- 23.1 Consent of Ernst & Young LLP. (Incorporated by reference to Exhibit 23.1 to Form 10-K of the Company filed February 22, 2019.)
- 31.1 Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer). (Incorporated by reference to Exhibit 31.1 to Form 10-K of the Company filed February 22, 2019.)
- 31.2 Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Financial Officer). (Incorporated by reference to Exhibit 31.2 to Form 10-K of the Company filed February 22, 2019.)
- 32 Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer and Chief Financial Officer). (Incorporated by reference to Exhibit 32 to Form 10-K of the Company filed February 22, 2019.)
- 101 XBRL (Extensible Business Reporting Language). The following materials from AvalonBay Communities, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2018, formatted in XBRL: (i) consolidated balance sheets, (ii) consolidated statements of comprehensive income, (iii) consolidated statements of equity, (iv) consolidated statements of cash flows and (v) notes to consolidated financial statements. (Incorporated by reference to Exhibit 101 to Form 10-K of the Company filed February 22, 2019.)
- ⁺ Management contract or compensatory plan or arrangement required to be filed or incorporated by reference as an exhibit pursuant to Item 15(a)(3) of Form 10-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AvalonBay Communities, Inc.

Date: March 15, 2019 By: /s/ KEVIN P. O'SHEA

Kevin P. O'Shea, Chief Financial Officer
(Principal Financial Officer)