

Education Realty Trust, Inc.  
Form 8-K  
June 02, 2010

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT PURSUANT  
TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report: June 2, 2010

Education Realty Trust, Inc.  
(Exact Name of Registrant as Specified in Its Charter)

|  |  |  |
|--|--|--|
| Maryland<br>(State or Other<br>Jurisdiction of<br>Incorporation) | 001-32417<br>(Commission File<br>Number) | 20-1352180<br>(IRS Employer<br>Identification No.) |
|--|--|--|

|  |                     |
|--|---------------------|
| 530 Oak Court Drive, Suite 300<br>Memphis, Tennessee<br>(Address of Principal Executive Offices) | 38117<br>(Zip Code) |
|--|---------------------|

901-259-2500  
(Registrant's Telephone Number, Including Area Code)

Not Applicable  
(Former Name or Former Address, if Changed Since Last Report)

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 (see General Instruction A.2. below):

- 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))
-

Item 1.01. Entry into a Material Definitive Agreement.

On June 2, 2010, Education Realty Trust, Inc. (the “Company”) and Education Realty Operating Partnership, LP (the “Operating Partnership”) entered into separate Equity Distribution Agreements (the “Agreements”) with each of KeyBanc Capital Markets Inc. (“KeyBanc”) and UBS Securities LLC (“UBS” and together with KeyBanc, the “Sales Agents”). Pursuant to the terms and conditions of the Agreements, the Company may, from time to time, issue and sell through or to the Sales Agents, as sales agents and/or principal, shares of its common stock, \$0.01 par value per share, having an aggregate offering amount of up to \$50,000,000 (the “Shares”). Sales of the Shares, if any, will depend upon market conditions and other factors to be determined by the Company and may be made in transactions that are deemed to be “at-the-market” offerings as defined in Rule 415 under the Securities Act of 1933, as amended, including sales made by means of ordinary brokers’ transactions, including on the New York Stock Exchange, at market prices or as otherwise agreed to with the Sales Agents. The Company has no obligation to sell any of the Shares, and may at any time suspend offers under the Agreements or terminate the Agreements.

Each Sales Agent will be entitled to a commission that will not exceed, but may be lower than, 2% of the gross offering proceeds of Shares sold through it as sales agent. Under the terms of each Agreement, we also may sell Shares to the Sales Agents as principal, pursuant to a separate agreement, for its own account at a price agreed upon in writing at the time of sale.

When acting as sales agents under the Agreements, each of the Sales Agents has agreed, subject to the terms and conditions of the Agreements, to use its commercially reasonable efforts to execute any order that the Company submits to it under the applicable Agreement and with respect to which such Sales Agent has agreed to act as the Company’s sales agent.

The Company intends to use any net proceeds from the sale of its Shares under the Agreements for general corporate purposes which may from time to time include funding or partially funding the acquisition or the development of student housing communities, the improvement of student housing communities or the repayment of debt.

Affiliates of the Sales Agents are lenders and agents under the Company’s senior secured revolving credit facility. The Sales Agents and their affiliates have provided and in the future may continue to provide investment banking, commercial banking, corporate trust and other financial services to the Company and its affiliates in the ordinary course of business for which they have received and will receive customary compensation.

The Shares will be issued pursuant to the Company’s shelf registration statement on Form S-3 (File No. 333-161493), and a prospectus supplement relating to the Shares has been filed with the Securities and Exchange Commission. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Shares in any state in which such offer, solicitation or sale would be unlawful prior to registration of qualification under the securities laws of any such state.

---

The foregoing descriptions of the material terms of the Agreements and the transactions contemplated thereby, do not purport to be complete and are qualified in their entirety by reference to the full text of the Equity Distribution Agreements which are filed herewith as Exhibits 1.1 and 1.2 to this Current Report on Form 8-K and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit No. | Description  |
|-------------|--|
| 1.1         | Equity Distribution Agreement dated June 2, 2010 among Education Realty Trust, Inc., Education Realty Operating Partnership, LP and KeyBanc Capital Markets Inc. |
| 1.2         | Equity Distribution Agreement dated June 2, 2010 among Education Realty Trust, Inc., Education Realty Operating Partnership, LP and UBS Securities LLC           |
| 5.1         | Opinion of Venable LLP regarding legality of shares.   |
| 8.1         | Opinion of Bass, Berry & Sims PLC regarding tax matters.   |
| 23.1        | Consent of Venable LLP (included in Exhibit 5.1).  |
| 23.2        | Consent of Bass, Berry & Sims PLC (included in Exhibit 8.1).   |
| 99.1        | Press Release dated June 2, 2010   |

---

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.

EDUCATION REALTY TRUST, INC.

Date: June 2, 2010

By: /s/ Randall H. Brown  
Randall H. Brown  
Executive Vice President, Chief  
Financial Officer,  
Treasurer and Secretary

---

INDEX TO EXHIBITS

| Exhibit No. | Description  |
|-------------|--|
| 1.1         | Equity Distribution Agreement dated June 2, 2010 among the Education Realty Trust, Inc., Education Realty Operating Partnership, LP and KeyBanc Capital Markets Inc. |
| 1.2         | Equity Distribution Agreement dated June 2, 2010 among the Education Realty Trust, Inc., Education Realty Operating Partnership, LP and UBS Securities LLC           |
| 5.1         | Opinion of Venable LLP regarding legality of shares.   |
| 8.1         | Opinion of Bass, Berry & Sims PLC regarding tax matters.   |
| 23.1        | Consent of Venable LLP (included in Exhibit 5.1).  |
| 23.2        | Consent of Bass, Berry & Sims PLC (included in Exhibit 8.1).   |
| 99.1        | Press Release dated June 2, 2010   |

---