

ACADIA REALTY TRUST
Form S-8
September 26, 2012

As filed with the Securities
and Exchange Commission
on September 26, 2012
Registration No. _____

**UNITED STATES
SECURITIES AND
EXCHANGE
COMMISSION
Washington, D.C. 20549**

FORM S-8
REGISTRATION
STATEMENT
UNDER THE SECURITIES
ACT OF 1933

**ACADIA REALTY
TRUST**
(Exact name of registrant as
specified in its charter)

Maryland **23-2715194**
(State of Organization) (I.R.S. Employer Identification No.)

**1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
(914) 288-8100**
(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

**ACADIA REALTY TRUST
2006 SHARE INCENTIVE PLAN,**

as amended and restated by the

AMENDED AND RESTATED

**ACADIA REALTY TRUST
2006 SHARE INCENTIVE PLAN**

(Full title of the plan)

**Kenneth F. Bernstein
President and Chief Executive Officer
Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
(914) 288-8100**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Mark Schonberger, Esq.
Goodwin Procter LLP
620 Eighth Avenue
New York, NY 10018
(212) 813-8800

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

Large accelerated filer Accelerated filer Non-accelerated filer (Do not check if smaller reporting company)
Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of each class of securities to be registered | Amount to be registered (1) | Proposed maximum offering price per unit (2) | Proposed maximum aggregate offering price | Amount of registration fee |
|---------------------------------------------------------------------------------------|-----------------------------|----------------------------------------------|-------------------------------------------|----------------------------|
| Shares of beneficial interest classified as common shares, par value \$.001 per share | 1,933,924 | \$ 25.35 | \$49,024,973.40 | \$ 5,618.26 |

Registered herein are 1,933,924 shares of the issuer's Common Shares that may be issued pursuant to its 2006 Share Incentive Plan, as amended and restated by the Amended and Restated 2006 Share Incentive Plan. Also registered (1) hereunder are such additional number of Common Shares, presently indeterminable, as may be necessary to satisfy the anti-dilution provisions of the Plans to which this Registration Statement relates in accordance with Rule 416 under the Securities Act of 1933, as amended (the "**Securities Act**");

Calculated pursuant to paragraphs (c) and (h) of Rule 457 of the Securities Act, the proposed maximum offering price per share of the shares being registered is estimated solely for the purpose of determining the registration fee, (2) based upon the average of the high and low prices per share of the Registrant's Common Shares, as reported on the New York Stock Exchange on September 25, 2012, which is within five business days prior to the date of filing of this Registration Statement.

PART I
INFORMATION NOT REQUIRED IN THE PROSPECTUS

ITEM 1. PLAN INFORMATION

The documents containing the information specified in Item 1 of Part I of this Registration Statement will be sent or given to participants who receive awards under the 2006 Share Incentive Plan, as amended and restated by the Amended and Restated 2006 Share Incentive Plan (collectively, the “**Plan**”) and, in accordance with Section 10(a) of the Securities Act and Rules 424 and 428 promulgated under the Securities Act by the Securities and Exchange Commission (the “**Commission**”) are not being filed with, or included in, this Registration Statement.

ITEM 2. REGISTRATION INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION

The documents containing the information specified in Item 2 of Part I of this Registration Statement will be sent or given free of charge to participants who receive awards under the Plan and, in accordance with Section 10(a) of the Securities Act and Rule 428 promulgated under the Securities Act, are not being filed with, or included in, this Registration Statement. The requests can be sent to:

Acadia Realty Trust
1311 Mamaroneck Avenue
Suite 260
White Plains, New York 10605
Attn: Robert Masters, Esq.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents, which have been filed with the SEC by the Registrant, are incorporated by reference in this Registration Statement. The information incorporated by reference is considered to be part of this Registration Statement, and information that the Registrant files later with the SEC will automatically update and supersede this

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information. The Registrant incorporates by reference the documents listed below and any future filings the Registrant makes with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”):

(a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed with the SEC on February 28, 2012, as amended on March 26, 2012,

(b) The description of the Registrant’s common shares of beneficial interest contained in its Registration Statement on Form 8-A dated May 21, 1993 (SEC File No. 33-6008), filed on May 26, 1993 pursuant to Section 12(g) of the Exchange Act, as amended, including any amendment or report filed for the purpose of updating such description;

(c) The Registrant's definitive proxy statement on Schedule 14-A, filed on April 5, 2012 in connection with the annual meeting held on May 16, 2012;

(d) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2012, filed with the SEC on May 9, 2012, and the fiscal quarter ended June 30, 2012, filed with the SEC on August 8, 2012; and

(e) The Registrant's Form 8-K filed with the SEC on January 27, January 30, February 9 (solely with respect to Item 8.01), April 13, April 25, May 17, July 25, August 13 2012, and August 17, 2012 (solely with respect to Item 8.01).

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Registrant's bylaws and declaration of trust authorize the Registrant, to the maximum extent permitted under Maryland law, to indemnify its trustees and officers in their capacity as such. Section 8-301(15) of the Corporations and Associations Article of the Annotated Code of Maryland permits a Maryland REIT to indemnify or advance expenses to trustees and officers to the same extent as is permitted for directors and officers of a Maryland corporation under the Maryland General Corporation Law ("MGCL"). The MGCL requires a Maryland corporation (unless its charter provides otherwise, which the Registrant's declaration of trust does not) to indemnify a director or officer who has been successful, on the merits or otherwise against reasonable expenses, in the defense of any proceeding to which he is made a party by reason of his service in that capacity, or in the defense of any claim, issue or matter in the proceeding. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was

material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that a personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, the MGCL permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and a written undertaking by such director or officer or on his or her behalf to repay the amount paid or reimbursed by the corporation if it will ultimately be determined that the standard of conduct was not met.

The Registrant's declaration of trust authorizes the Registrant, and its bylaws require the Registrant, to the maximum extent permitted by Maryland law, to indemnify (i) any present or former trustee or officer or (ii) any individual who, while serving as the Registrant's trustee and at the Registrant's request, serves or has served another corporation, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee, from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her service in such capacity or capacities, and to pay or reimburse his or her reasonable expenses in advance of final disposition of such a proceeding.

The Registrant's bylaws also permit the Registrant, subject to the approval of its board of trustees, to indemnify and advance expenses to any person who served as predecessor of the Registrant in any of the capacities described above and to any employee or agent of the Registrant or a predecessor of the Registrant.

In addition to the above, the Registrant has purchased and maintains insurance on behalf of all of its trustees and executive officers against liability asserted against or incurred by them in their official capacities with the Registrant, whether or not the Registrant is required or has the power to indemnify them against the same liability.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

| EXHIBIT NO. | DESCRIPTION |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1 | Amended and Restated Acadia Realty Trust 2006 Share Incentive Plan (included as an appendix to Registrant's definitive proxy statement on Schedule 14-A, filed in connection with the annual meeting held on April 5, 2012 (SEC File No. 001-2002), which is incorporated herein by reference) |
| 5.1 | Opinion of Venable LLP |
| 23.1 | Consent of BDO USA, LLP, Independent Auditors |
| 23.2 | Consent of Venable LLP (included in Exhibit 5.1) |
| 24.1 | Powers of Attorney (included as a part of the signature page of this Registration Statement) |

ITEM 9. UNDERTAKINGS

The undersigned Registrant hereby undertakes the following:

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act ;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act, that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) The undersigned Registrant hereby undertakes, that, insofar as indemnification for liabilities arising under the Securities Act may be permitted to trustees, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a trustee, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such trustee, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Acadia Realty Trust certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of White Plains, State of New York, on this 26th day of September, 2012.

ACADIA REALTY TRUST
A Maryland real estate investment
trust (Registrant)

By: /s/ Kenneth F. Bernstein
Name: Kenneth F. Bernstein
Title: Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Kenneth F. Bernstein and Robert Masters, and each or either of them, his true and lawful attorney-in-fact with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement (or any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462 (b) under the Securities Act of 1933) and to cause the same to be filed, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby granting to said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing whatsoever requisite or desirable to be done in and about the premises, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all acts and things that said attorneys-in-fact and agents, or either of them, or their substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--------------------------------------------------|---------------------------------------------------------------------------------|--------------------|
| /s/ Kenneth F. Bernstein Kenneth F. Bernstein | Chief Executive Officer, President and Trustee (Principal Executive Officer) | September 26, 2012 |

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| | | |
|----------------------------------------------|--------------------------|--------------------|
| /s/ Lee S. Wielansky Lee S. Wielansky | Independent Lead Trustee | September 26, 2012 |
| /s/ Lorrence T. Kellar Lorrence T. Kellar | Trustee | September 26, 2012 |
| /s/ Douglas Crocker II Douglas Crocker II | Trustee | September 26, 2012 |

| Signature | Title | Date |
|--------------------------------------|------------------------------------------------|--------------------|
| /s/ Wendy Luscombe Wendy Luscombe | Trustee | September 26, 2012 |
| /s/ William Spitz William Spitz | Trustee | September 26, 2012 |
| /s/ Jon Grisham Jon Grisham | Senior Vice President, Chief Financial Officer | September 26, 2012 |

INDEX TO EXHIBITS

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NO. DESCRIPTION**

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