

AMERIVEST PROPERTIES INC
Form S-8
June 07, 2004

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As filed with the Securities and Exchange Commission on June 7, 2004

File No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

AMERIVEST PROPERTIES INC.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction
of incorporation or organization)

84-1240264
(I.R.S. Employer
Identification No.)

1780 South Bellaire, Suite 100
Denver, Colorado
(Address of principal executive offices)

80222
(Zip Code)

Registrant's telephone number, including area code:
(303) 297-1800

2003 LONG-TERM STOCK INCENTIVE PLAN

(Full title of the plan)

Charles K. Knight
President
1780 South Bellaire, Suite 100
Denver, Colorado 80222
(303) 297-1800
(Agent for Service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share(1)	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
Common Stock, par value \$.001 per share	500,000	\$6.07	\$3,035,000	\$384.53

(1)

Calculated in accordance with Rule 457(c) of the Securities Act of 1933 based upon the average of the high and low reported sales prices of the Company's common stock on June 1, 2004 as reported by the American Stock Exchange.

Part II

**INFORMATION REQUIRED IN
THE REGISTRATION STATEMENT**

Item 3. Incorporation of documents by Reference.

The following documents, which have heretofore been filed by AmeriVest Properties Inc. ("Company" or "Registrant") with the Securities and Exchange Commission are incorporated by reference herein and shall be deemed to be a part hereof:

- (a) AmeriVest's Annual Report on Form 10-KSB for the fiscal year ended December 31, 2003;
- (b) AmeriVest's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2004;
- (c) AmeriVest's definitive Proxy Statement on Schedule 14A filed April 20, 2004;
- (d) AmeriVest's Periodic Reports on Form 8-K filed on March 24, 2004 and March 26, 2004; and
- (e) The description of the shares of common stock contained in AmeriVest's registration statement on Form 8-A, as amended.

The Securities and Exchange Commission has assigned file number 1-14462 to reports and other information that AmeriVest files with the Securities and Exchange Commission.

All documents subsequently filed by AmeriVest pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act of 1934 prior to the termination of the offering of the offered securities shall be deemed to be incorporated by reference in this prospectus and to be a part of this prospectus from the date of filing of such documents. Any statement contained in this prospectus or in a document incorporated or deemed to be incorporated by reference in this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus, or in any subsequently filed document which is incorporated or deemed to be incorporated by reference in this prospectus, modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

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 General Corporation Law of the State of Maryland allows corporations to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, partner, trustee, or agent of another corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, unless it is established that:

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the act or omission was material to the matter giving rise to the proceeding and either was committed in bad faith or was the result of active and deliberate dishonesty;

the person actually received an improper personal benefit in money, property or services; or

in the case of any criminal proceeding, the person had reasonable cause to believe that the act or omission was unlawful.

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Under Maryland law, indemnification may be provided against judgments, penalties, fines, settlements and reasonable expenses actually incurred by the person in connection with the proceeding. The indemnification may be provided, however, only if authorized for a specific proceeding after a determination has been made that indemnification is permissible under the circumstances because the person met the applicable standard of conduct. This determination is required to be made:

by the board of directors by a majority vote of a quorum of directors not, at the time, parties to the proceeding or, if a quorum cannot be obtained, then by a majority vote of a committee of the board consisting solely of two or more directors not, at the time, parties to the proceeding and who a majority of the board of directors designated to act in the matter;

by special legal counsel selected by the board or board committee by the vote set forth above, or, if such vote cannot be obtained, by a majority of the entire board; or

by the stockholders.

If the proceeding is one by or in the right of the corporation, indemnification may not be provided as to any proceeding in which the person is found liable to the corporation.

A Maryland corporation may pay, before final disposition, the expenses, including attorneys' fees, incurred by a director, officer, employee or agent in defending a proceeding. Under Maryland law, expenses may be advanced to a director or officer when the director or officer gives a written affirmation of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification and a written undertaking to the corporation to repay the amounts advanced if it is ultimately determined that he or she is not entitled to indemnification. Maryland law does not require that the undertaking be secured, and the undertaking may be accepted without reference to the financial ability of the director or officer to repay the advance. A Maryland corporation is required to indemnify any director who has been successful, on the merits or otherwise, in defense of a proceeding for reasonable expenses. The determination as to reasonableness of expenses is required to be made in the same manner as required for indemnification.

Under Maryland law, the indemnification and advancement of expenses provided by statute are not exclusive of any other rights to which a person who is not a director seeking indemnification or advancement of expenses may be entitled under any charter, bylaw, agreement, vote of stockholders, vote of directors or otherwise.

Our bylaws provide that we shall indemnify each director, officer or employee to

the fullest extent permitted by the General Corporation Law of the State of Maryland, or any similar provision or provisions of applicable law at the time in effect, in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was at any time serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, other enterprise or employee benefit plan; and

to the fullest extent permitted by the common law and by any statutory provision other than the General Corporation Law of the State of Maryland in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was at any time a director, officer or employee of the corporation, or is or was at any time serving at the request of the corporation as a director, officer, or employee of another corporation, partnership, joint venture, trust, other enterprise or employee benefit plan.

Reasonable expenses incurred in defending any action, suit or proceeding described above shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon

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receipt of an undertaking by or on behalf of such director, officer or employee to repay such amount to the corporation if it shall ultimately be determined that he is not entitled to be indemnified by us.

In addition to the general indemnification described above, Maryland law permits corporations to include any provision expanding or limiting the liability of its directors and officers to the corporation or its stockholders for money damages, but may not include any provision that restricts or limits the liability of its directors or officers to the corporation or its stockholders:

to the extent that it is proved that the person actually received an improper benefit or profit in money, property, or services for the amount of the benefit or profit in money, property or services actually received; or

to the extent that a judgment or other final adjudication adverse to the person is entered in a proceeding based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding.

We have adopted, in our charter, a provision that eliminates and limits the personal liability of each of our directors and officers to the full extent permitted by the laws of the State of Maryland.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See Index to Exhibits.

Item 9. Undertakings.

The undersigned registrant hereby undertakes:

- (a) 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 of 1933;
 - (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 the 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 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;
 - (iii) To include any material 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;

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Provided, however, that paragraphs (a)(i) and (a)(ii) do not apply if the Registration Statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant

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pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

- (b) That, for the purpose of determining any liability under the Securities Act of 1933, 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.
- (c) 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.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 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.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 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 director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, 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 of 1933 and will be governed by the final adjudication of such issue.

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/s/ HARRY P. GELLES

Director

June 7, 2004

Harry P. Gelles

/s/ ALEXANDER S. HEWITT

Director

June 7, 2004

Alexander S. Hewitt

/s/ ROBERT W. HOLMAN, JR.

Director

June 7, 2004

Robert W. Holman, Jr.

/s/ JOHN A. LABATE

Director

June 7, 2004

John A. Labate

/s/ JERRY J. TEPPER

Director

June 2, 2004

Jerry J. Tepper

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INDEX TO EXHIBITS

Exhibit	Description
4.1	Articles of Amendment and Restatement of Articles of Incorporation. Incorporated by reference to Exhibit 3.1 of AmeriVest's Registration Statement on Form SB-2/A filed with the SEC on May 29, 2003 (Registration No. 333-105183).
4.2A	Amended and Restated Bylaws as amended and restated as of April 16, 2002. Incorporated by reference to Exhibit 3.2 of AmeriVest's Registration Statement on Form SB-2 filed with the SEC on April 19, 2002 (Registration No. 333-86676).
4.2B	First Amendment to Amended and Restated Bylaws dated May 20, 2003. Incorporated by reference to Exhibit 3.2B of AmeriVest's Registration Statement on Form SB-2/A filed with the SEC on May 29, 2003 (Registration No. 333-105183).
4.3	Specimen Common Stock Certificate. Incorporated by reference to Exhibit 4.1 of AmeriVest's Registration Statement on Form SB-2/A filed with the SEC on April 19, 2002 (Registration No. 333-86676).
4.4	AmeriVest Properties Inc. 2003 Long-Term Incentive Plan. Incorporated by reference to Exhibit 10.22 of AmeriVest's Registration Statement on Form SB-2/A filed with the SEC on May 29, 2003 (Registration No. 333-105183).
5.1	Opinion of Davis Graham & Stubbs LLP as to the validity of the common stock being offered.
23.1	Consent of KPMG LLP.
23.2	Consent of Davis Graham & Stubbs LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on the signature page to this registration statement).

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SIGNATURES

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