

Edgar Filing: HOME PROPERTIES INC - Form S-8

HOME PROPERTIES INC

Form S-8

August 18, 2005

As filed with the Securities and Exchange Commission on August 18, 2005

Registration No. \_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

HOME PROPERTIES, INC.

(exact name of registrant as specified in its charter)

MARYLAND

(State or other jurisdiction  
of incorporation or organization)

16-1455126

(I.R.S. Employer  
Identification No.)

850 Clinton Square, Rochester, New York  
(Address of Principal Executive Offices)

14604  
(Zip Code)

HOME PROPERTIES, INC. AMENDED AND RESTATED 2003 STOCK BENEFIT PLAN  
(Full title of the Plan)

Ann M. McCormick, Esq.

Executive Vice President, Secretary and General Counsel

Home Properties, Inc.

850 Clinton Square  
Rochester, New York 14604  
(585) 546-4900  
(585) 232-3147

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

Copy to:

Deborah McLean Quinn, Esq.

Nixon Peabody LLP

900 Clinton Square

Rochester, New York 14604

(585) 263-1307

(585) 263-1600

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered(1)	Proposed Maximum Offering Amount to be Registered(1)	Proposed Maximum Aggregate price per share(2)	Amount of Offering Price(2)	Registration Fee
Common Stock \$.01 par value	1,409,475(3)	\$40.895	\$57,640,480	\$6,785

(1) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement covers an indeterminate amount of interests to be offered

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or sold pursuant to the Home Properties Amended and Restated 2003 Stock Benefit Plan.

(2) Inserted solely for the purpose of calculating the registration fee pursuant to Rule 457(h) and based upon the average of the high and low prices for the registrant's Common Stock on the New York Stock Exchange reported as of August 16, 2005.

(3) Shares to be issued pursuant to stock options or restricted stock awards, granted under the registrant's Amended and Restated 2003 Stock Benefit Plan, as amended.

Approximate date of commencement of the proposed issuance of the securities to the public: From time to time after the Registration Statement becomes effective.

### EXPLANATORY NOTE

Home Properties, Inc. filed a Registration Statement on Form S-8 on May 17, 2004, (Registration No. 333-115574) relating to the registration of shares of common stock of Home Properties, Inc. This Registration Statement on Form S-8 relates to the Home Properties, Inc. Amended and Restated 2003 Stock Option Plan which increased the number of shares of common stock, \$.01 par value per share (the "Common Stock"), to be issued thereunder by 1,409,475 shares.

Pursuant to General Instruction E of Form S-8, this Registration Statement on Form S-8 registers an additional 1,409,475 shares of the Company's common stock which may be acquired under the Company's Amended and Restated 2003 Stock Option Plan.

The contents of the previous Registration Statement on Form S-8 filed with the Securities and Exchange Commission on May 17, 2004 (File No. 333-12551) are incorporated herein by reference.

Pursuant to a filing on September 24, 2003, an Amendment to the Articles of Incorporation Home Properties of New York, Inc. filed with the Maryland Department of Assessments and Taxation changed the corporation's name to Home Properties, Inc.

### Part II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 5. Interests of Named Experts and Counsel.

The validity of the securities offered hereby will be passed upon by Nixon Peabody LLP, Rochester, New York. Certain partners of Nixon Peabody LLP own equity equal to less than 1% of the equity of Home Properties, Inc. and Home Properties, L.P. on a fully diluted basis.

Item 8. Exhibits.

See Exhibit Index.

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## SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all 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 Rochester, State of New York, on the 17th day of August, 2005.

HOME PROPERTIES, INC.

By: /s/ Edward J. Pettinella

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Edward J. Pettinella  
President and Chief  
Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby severally constitutes and appoints Edward J. Pettinella, David P. Gardner and Ann M. McCormick each of them, his true and lawful attorney-in-fact and agent, 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 the registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each said attorneys-in-fact and agents or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

/s/ Edward J. Pettinella Edward J. Pettinella	Director, President and CEO (Principal Executive Officer)	August 17, 2005
/s/ David P. Gardner David P. Gardner	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	August 17, 2005
/s/Robert J. Luken Robert J. Luken	Senior Vice President, Treasurer and Chief Accounting Officer (Principal Accounting Officer)	August 17, 2005
/s/ Norman P. Leenhouts Norman P. Leenhouts	Director	August 17, 2005

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/s/ Nelson B. Leenhouts Nelson B. Leenhouts	Director	August 17, 2005
/s/ William Balderston, III William Balderston, III	Director	August 17, 2005
/s/ Josh E. Fidler Josh E. Fidler	Director	August 17, 2005
/s/ Alan L. Alan L. Gosule	Director	August 17, 2005
/s/ Leonard F. Helbig, III Leonard F. Helbig, III	Director	August 17, 2005
/s/ Roger W. Kober Roger W. Kober	Director	August 17, 2005
/s/ Clifford W. Smith, Jr. Clifford W. Smith, Jr.	Director	August 17, 2005
/s/ Paul L. Smith Paul L. Smith	Director	August 17, 2005
/s/ Thomas S. Summer Thomas S. Summer	Director	August 17, 2005
/s/ Amy L. Tait Amy L. Tait	Director	August 17, 2005

EXHIBIT INDEX

Exhibit No.	Description	Location
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4.1	Articles of Amendment and Restatement of Articles of Incorporation of Home Properties of New York, Inc.	Incorporated by reference to the Home Properties of New York, Inc. Registration Statement on Form S-11, file No. 33-78862 (the "S-11 Registration Statement").
4.2	Articles of Amendment of Articles of Incorporation of Home Properties of New York, Inc	Incorporated by reference to the Form 8-K filed by Home Properties of New York, Inc. on July 2, 1999, File No. 001-13136.
4.3	Amended and Restated By-Laws of Home Properties of New	Incorporated by reference to the Form 8-K filed by Home

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	York, Inc.	Properties of New York, Inc. on January 7, 1997, File No. 001-13136.
4.4	Amended and Restated By-Laws of Home Properties, Inc.	Incorporated by reference to Exhibit 3.1 to the Form 8-K filed by Home Properties of New York, Inc. on January 7, 1997, File No. 001-13136.
4.5	Articles of Amendment of the Articles of Incorporation of Home Properties of New York, Inc.	Incorporated by reference to Exhibit 3.11 to the Form 10 Q filed by Home Properties, Inc. on May 10, 2004, File No. 001-13136.
4.6	Amendment Number One to Amended and Restated Bylaws of Home Properties, Inc.	Incorporated by reference to Exhibit 3.12 to the Form 10-Q filed by Home Properties, Inc. on May 10, 2004, File No. 001-13136.
4.7	Home Properties, Inc. Amended and Restated 2003 Stock Benefit Plan	Incorporated by reference to Exhibit A (Pages A-1 through A-16) to the Proxy Statement filed by Home Properties, Inc. on March 31, 2005
5.1	Opinion of Nixon Peabody LLP	Filed herewith.
23.1	Consent of Nixon Peabody LLP	Contained in opinion filed as Exhibit 5.1 to this Registration Statement.
23.2	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm	Filed herewith.