

AMERICAN RESIDENTIAL INVESTMENT TRUST INC
Form S-8
April 11, 2003

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Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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

American Residential Investment Trust, Inc.

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

33-0741174

(I.R.S. employer identification no.)

**10421 Wateridge Circle, Suite 250
San Diego, California 92121**

(Address of principal executive offices) (Zip code)

**American Residential Investment Trust, Inc.
1997 Stock Option Plan
1997 Outside Directors Stock Option Plan**

(Full title of the plan)

**Clay Strittmatter (Secretary)
American Residential Investment Trust, Inc.
10421 Wateridge Circle, Suite 250
San Diego, California 92121**

(Name and address of agent for service)

Telephone number, including area code, of agent for service: **(858) 909-1200**.

This registration statement shall hereafter become effective in accordance with Rule 462 promulgated under the Securities Act of 1933, as amended (the "Securities Act").

CALCULATION OF REGISTRATION FEE

| Title of Securities to be registered(1) | Amount to be registered(2) | Proposed maximum offering price per share | Proposed maximum aggregate offering price | Amount of registration fee |
|--|---------------------------------------|--|--|---------------------------------------|
| 1997 Stock Option Plan | | | | |

| | | | | |
|---|----------------|-----------|--------------------|-----------------|
| Common Stock | 196,000 | \$2.87(3) | \$562,520 | \$45.51 |
| Par Value \$0.01 | 504,000 | \$4.34(4) | \$2,187,360 | \$164.32 |
| 1997 Outside Directors Stock Option Plan | | | | |
| Common Stock | 112,500 | \$3.48(3) | \$391,500 | \$31.68 |
| Par Value \$0.01 | 37,500 | \$4.34(4) | \$162,750 | \$13.17 |
| TOTALS | 850,000 | | \$3,304,130 | \$267.32 |

- (1) The securities to be registered include options and rights to acquire Common Stock.
- (2) Pursuant to Rule 416(a), this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction.
- (3) Estimated pursuant to Rule 457 solely for the purposes of calculating the registration fee based upon the weighted average exercise price of the outstanding options as of April 8, 2003.
- (4) Estimated pursuant to Rule 457 solely for purposes of calculating the registration fee. The price is based upon the average of the high and low prices of the Common Stock on April 8, 2003, as reported on the American Stock Exchange.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

American Residential Investment Trust, Inc. (the "Company") hereby incorporates by reference in this registration statement the following documents:

- (a) The Company's Annual Report filed on Form 10-K for the fiscal year ended December 31, 2002, and filed on March 31, 2003.
- (b) The Company's Registration Statement on Form 8-A filed pursuant to Section 12 of the Securities and Exchange Act 1934 (the "Exchange Act") on October 14, 1997, and any further amendment or report filed hereafter for the purpose of updating any such description.
- (c) All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this registration statement which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities

The class of securities to be offered is registered under Section 12 of the Exchange Act.

Item 5. Interests of Named Experts and Counsel

Inapplicable.

Item 6. Indemnification of Directors and Officers

As permitted by the Maryland General Corporation Law, the Company's Second Articles of Amendment and Restatement obligates the Company to indemnify its present and former directors and officers and to pay or reimburse reasonable expenses for such individuals in advance of the final disposition of a proceeding to the maximum extent permitted from time to time by Maryland law. The Maryland General Corporation Law permits a 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 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 such proceeding and was committed in bad faith or 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. The Bylaws implement the provisions relating to indemnification contained in the Company's Charter. Maryland law permits the charter of a Maryland corporation to include a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages, except to the extent that (i) the person actually received an improper benefit or profit in money, property or services, or (ii) a judgment or other final adjudication is entered in a proceeding based on a finding 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. The Company's Charter contains a provision providing for elimination of the liability of its directors or officers to the Company or its stockholders for money damages to the maximum extent permitted by Maryland law from time to time.

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The Company purchased and maintains officers' and directors' insurance for the benefit of its officers and directors. The Company has entered into indemnity agreements with each of its officers and directors pursuant to which the Company indemnifies its officers and directors to the fullest extent allowed by law.

Item 7. Exemption From Registration Claimed

Inapplicable.

Item 8. Exhibits

See Exhibit Index.

Item 9. Undertakings

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)

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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;

(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 (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed 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.

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.

Insofar as indemnification for liabilities arising under the Securities Act 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 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

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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 and will be governed by the final adjudication of such issue.

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SIGNATURE

Pursuant to the requirements of the Securities Act, the registrant 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 San Diego, State of California, on April 11, 2003.

American Residential Investment Trust, Inc.

By: /s/ JUDITH A. BERRY

Judith A. Berry
Executive Vice President and Chief Financial Officer

SIGNATURES AND POWER OF ATTORNEY

The officers and directors of American Residential Investment Trust, Inc. whose signatures appear below, hereby constitute and appoint Judith A. Berry, Executive Vice President and Chief Financial Officer and Clay Strittmatter, Secretary, and each of them, their true and lawful attorneys and agents, with full power of substitution, each with power to act alone, to sign and execute on behalf of the undersigned any amendment or amendments to this registration statement on Form S-8, and each of the undersigned does hereby ratify and confirm all that each of said attorney and agent, or their or his substitutes, shall do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on April 11, 2003.

| Signature | Title |
|---|--|
| <u>/s/ JOHN M. ROBBINS</u> John M. Robbins | Chairman of the Board, Chief Executive Officer and Director (Principal Executive Officer) |
| <u>Jay M. Fuller</u> Jay M. Fuller | Executive Vice President of Operations and Director |
| <u>/s/ JUDITH A. BERRY</u> Judith A. Berry | Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) |
| <u>/s/ H. JAMES BROWN</u> H. James Brown, Ph.D. | Director |
| <u>/s/ KEITH JOHNSON</u> Keith Johnson | Director |
| <u>Ray McKewon</u> Ray McKewon | Director |
| <u>/s/ RICHARD T. PRATT</u> Richard T. Pratt, Ph.D | Director |
| <u>/s/ MARK J. RIEDY</u> Mark J. Riedy, Ph.D. | Director |
| <u>/s/ JOHN C. ROCCHIO</u> John C. Rocchio | Director |

EXHIBIT INDEX

| | |
|---------|---|
| 4.1(1) | Second Articles of Amendment and Restatement of the Company |
| 4.2(2) | Second Amended and Restated Bylaws of the Company |
| 5.1 | Opinion of Company Counsel |
| 23.1(3) | Consent of Counsel |
| 23.2 | Consent of PricewaterhouseCoopers LLP |
| 23.3 | Consent of KPMG LLP |
| 24(4) | Power of Attorney |
| 99.1(5) | 1997 Stock Option Plan |
| 99.2(5) | 1997 Outside Directors Stock Option Plan |

- (1) Incorporated by reference to Exhibit 3.1 to the Company's Form 10-K filed with the Securities and Exchange Commission on March 31, 2003.
- (2) Incorporated by reference to Exhibit 3.2 to the Company's Form 10-Q filed with the Securities and Exchange Commission on August 14, 2002.
- (3) Included in Exhibit 5.
- (4) Included in the signature pages to this registration statement.
- (5) Incorporated by reference to the Company's Proxy Statement filed with the Securities and Exchange Commission on June 7, 2002.

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