

INVESTORS REAL ESTATE TRUST

Form S-3

April 09, 2010

As filed with the Securities and Exchange Commission on April 9, 2010

Registration No. ____ - _____

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

Form S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Investors Real Estate Trust

(Exact name of registrant as specified in its charter)

North Dakota
(State or other jurisdiction of
incorporation or organization)

45-0311232
(I.R.S. Employer
Identification No.)

3015 16th Street, SW, Suite 100
Minot, ND 58701
(701) 837-4738
(Address, including zip code, and telephone number, including area code,
of registrant's principal executive offices)

Timothy P. Mihalick
President and Chief Executive Officer
Investors Real Estate Trust
3015 16th Street SW, Suite 100, P.O. Box 1988
Minot, ND 58701
(701) 837-4738

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

Copies to:

Karin Wentz, Esq.
Associate General Counsel
10050 Crosstown Circle, Suite 105
Eden Prairie, MN 55344
(952) 401-4802

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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 the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
 Non-accelerated filer Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be Registered(1)	Amount to be Registered (2)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price(2) (3) (4)	Amount of registration fee(2)
Common Shares of Beneficial Interest, no par value (5)				
Preferred Shares of Beneficial Interest, no par value (6)				
Total	\$ _____	% \$	150,000,000	\$10,695 (4)

(1) Pursuant to General Instruction II.D of Form S-3 under the Securities Act of 1933, as amended, or the Securities Act, the fee table does not specify by each class of securities to be registered information as to the amount to be registered, proposed maximum offering price per share, and proposed maximum aggregate offering price.

(2)

The amount to be registered consists of up to \$150,000,000 of an indeterminate number of common shares of beneficial interest and an indeterminate number of preferred shares of beneficial interest as may be sold, from time to time, by the Registrant. There are also being registered hereunder an indeterminate principal amount of each class of securities registered hereunder (the “underlying securities”) as may be issuable, with or without separate consideration, (i) upon conversion, exercise or exchange of any other class of securities registered hereunder, to the extent such securities are by their terms convertible into or exercisable or exchangeable for the underlying securities, or (ii) pursuant to antidilution provisions of any other class of securities registered hereunder.

- (3) Estimated solely for purposes of calculating the registration fee. Separate consideration may or may not be received for common shares of beneficial interest that are issued upon conversion of preferred shares of beneficial interest registered hereunder. The proposed maximum offering price per security will be determined from time to time by the Registrant in connection with the issuance by the Registrant of the securities registered hereunder. The aggregate maximum public offering price of all securities issued pursuant to this Registration Statement will not exceed \$150,000,000.
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- (4) Calculated pursuant to Rule 457(o) of the rules and regulations under the Securities Act.
- (5) Includes such indeterminate number of common shares of beneficial interest as may from time to time be issued at indeterminate prices or issuable upon conversion of preferred shares of beneficial interest registered hereunder.
- (6) Includes such indeterminate number of preferred shares of beneficial interest as may from time to time be issued at indeterminate prices.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

Subject to Completion, Dated April 9, 2010

Prospectus

\$150,000,000

Common Shares of Beneficial Interest

Preferred Shares of Beneficial Interest

Investors Real Estate Trust may from time to time offer and sell: (i) our common shares of beneficial interest, no par value, and (ii) in one or more classes or series, our preferred shares of beneficial interest, no par value, all with an aggregate public offering price of up to \$150,000,000, on terms to be determined at the time of the offering. In this prospectus, we refer to our common shares of beneficial interest as our common shares, our preferred shares of beneficial interest as our preferred shares, and we refer to our common shares and our preferred shares collectively as our securities. Our securities may be offered, separately or together, in amounts, at prices and on terms to be set forth in one or more supplements to this prospectus (each, a prospectus supplement). The aggregate public offering price and terms of the securities will be determined by market conditions at the time the securities are offered.

The specific terms of any securities we sell and the terms on which we are offering such securities will be set forth in a prospectus supplement. The specific terms may include limitations on direct or beneficial ownership and restrictions on transfer of the securities, in each case as may be appropriate to preserve our status as a real estate investment trust, or REIT, for federal income tax purposes. The applicable prospectus supplement will also contain information, where applicable, about material federal income tax considerations relating to, and any listing on a securities exchange of, the securities offered by the prospectus supplement. The applicable prospectus supplement may also add to, update or change information contained in this prospectus. You should carefully read this prospectus and any applicable prospectus supplement, together with the additional information described under the heading "Where You Can Find More Information," before you invest in any of our securities.

Our common and preferred shares are traded on the NASDAQ Global Select Market under the symbols "IRET" and "IRETP", respectively. Our executive offices are located at 3015 16th Street SW, Suite 100, Minot, North Dakota 58701, telephone number: 701-837-4738. Our website address is www.iret.com. The information set forth on, or otherwise accessible through, our web site is not incorporated into, and does not form a part of, this prospectus or any other report or document we file with or furnish to the Securities and Exchange Commission, or the SEC.

We may sell the securities offered by this prospectus directly, through agents designated by us from time to time or to or through underwriters or dealers. If any agents, underwriters or dealers are involved in the sale of any of our securities, their names, and any applicable purchase price, fee, commission or discount arrangements between or among them, will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. None of our securities may be sold without delivery of a prospectus supplement.

Investing in our securities involves certain risks. See "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended April 30, 2009, which is incorporated by reference herein, as updated and supplemented by our periodic reports and other information that we file with the SEC.

Neither the SEC nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is April ____, 2010.

No person has been authorized to give any information or to make any representations in connection with this offering other than those contained in this prospectus or incorporated by reference into this prospectus or an applicable prospectus supplement and, if given or made, such information or representations must not be relied upon as having been authorized by the Company or any underwriter, dealer or agent. This prospectus and any prospectus supplement do not constitute an offer to sell, or the solicitation of any offer to buy, any securities offered hereby in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. Neither the delivery of this prospectus or any prospectus supplement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Company since the date hereof or thereof.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC utilizing a “shelf” registration process. Under this shelf registration process, we may sell any combination of the securities described in this prospectus in one or more offerings up to a total aggregate dollar amount of \$150,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the heading “Where You Can Find More Information.”

You should rely only on the information contained and incorporated by reference in this prospectus. We have not authorized any other person to provide you with different or inconsistent information from that contained in this prospectus and the applicable prospectus supplement. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information in this prospectus and the applicable prospectus supplement, as well as the information we previously filed with the SEC and incorporated by reference, is accurate only as of the date on the front cover of this prospectus and the applicable prospectus supplement. Our business, financial condition, results of operations and prospects may have changed since those dates.

FORWARD-LOOKING STATEMENTS

This prospectus contains or incorporates by reference forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. You can identify some of the forward-looking statements by their use of forward-looking words, such as “believes,” “expects,” “may,” “should,” “seeks,” “approximately,” “intends,” “plans,” “estimates,” or “anticipates,” or the negative of those words or words. Forward looking statements contained or incorporated by reference in this prospectus include, among others, statements about the Company’s business strategies, including its acquisition and development strategies and internal property management initiative, industry trends, debt and capital market trends, and expected liquidity needs and sources (including capital expenditures and the ability to obtain financing or raise capital). Forward-looking statements involve inherent risks and uncertainties regarding events, conditions and financial trends that may affect our future plans of operation, business strategy, results of operations and financial position. A number of important factors could cause actual results to differ materially from those included within or contemplated by such forward-looking statements, including, but not limited to, the status of the economy, the status of capital markets including prevailing interest rates, compliance with and changes to regulations within environmental protection regimes, changes in financing terms, competition within the commercial office, medical (including senior housing), industrial, retail and multi-family housing industries, and changes in federal, state and local legislation. For a discussion of these and other factors that could cause actual results to differ from those contemplated in the forward-looking statements in this prospectus and in documents incorporated by reference in this prospectus, see the discussion under “Risk Factors” contained in this prospectus and in other information contained in our publicly available filings with the SEC, including our annual report on Form 10-K for the year ended April 30, 2009. We do not undertake any responsibility to update any of these factors or to announce publicly any revisions to forward-looking statements, whether as a result of new information, future events or otherwise.

INVESTORS REAL ESTATE TRUST

Our Company

We are a self-advised REIT that owns and operates commercial office, medical, industrial and retail properties and multi-family residential properties located primarily in the upper Midwest. We own the majority of our properties and conduct substantially all of our operations through our operating partnership, IRET Properties.

Our principal executive office is located at 3015 16th Street SW, Suite 100, Minot, North Dakota, 58701, and our telephone number is (701) 837-4738.

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RISK FACTORS

Investing in our company involves various risks, including the risk that you may lose your entire investment. Any one of the risk factors discussed, or other factors, could cause actual results to differ materially from expectations and could adversely affect our profitability. These risks are interrelated, and you should treat them as a whole. These risks described are not the only risks that may affect us. Additional risks and uncertainties not presently known to us or not identified, may also materially and adversely affect our business, financial condition, results of operations and ability to make distributions to our shareholders. Before making an investment decision, you should carefully consider all of the risks described in “Item 1A. Risk Factors” of our Annual Report on Form 10-K for the fiscal year ended April 30, 2009 and any risk factors in our subsequent SEC filings incorporated by reference herein, in addition to the other information contained or incorporated by reference in this prospectus and any accompanying prospectus supplement. In connection with the forward-looking statements that appear in the prospectus, you should also carefully review the cautionary statements referred to in “Forward-Looking Information” on page 3 of this prospectus.

USE OF PROCEEDS

Unless otherwise described in the applicable prospectus supplement, we plan to contribute the net proceeds from any sale of our securities to our operating partnership, IRET Properties, to use for general business purposes, including the acquisition, development, renovation, expansion or improvement of income-producing real estate properties and debt repayment.

GENERAL DESCRIPTION OF THE OFFERED SECURITIES

We may offer under this prospectus one or more of the following categories of our securities:

- common shares, no par value per share; and
- preferred shares, no par value per share, in one or more series.

The terms of any specific offering of securities will be set forth in a prospectus supplement relating to such offering.

Pursuant to our Third Restated Declaration of Trust, we are authorized to issue an unlimited number of our common shares, and an unlimited number of our preferred shares. As of January 31, 2010, 73,965,593 common shares were outstanding, and 1,150,000 of our 8.25% Series A Cumulative Redeemable Preferred Shares, no par value (“Series A Preferred Shares”) were outstanding. For a description of our Series A Preferred Shares, we refer you to our registration statement on Form 8-A, filed with the SEC on April 22, 2004 and incorporated by reference into this prospectus.

Our common shares are listed on the NASDAQ Global Select Market under the symbol “IRET.” Our Series A Preferred Shares are listed on the NASDAQ Global Select Market under the symbol “IRETP.” We may apply to list the securities which are offered and sold hereunder, as described in the prospectus supplement relating to such securities.

DESCRIPTION OF COMMON SHARES

The following description of our common shares sets forth certain general terms and provisions of the common shares to which any prospectus supplement may relate, including a prospectus supplement providing that common shares will be issuable upon conversion of preferred shares. The statements below describing our common shares are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our Third Restated Declaration of Trust and Bylaws, including any applicable amendments. The description of our common shares is

also subject to any terms specified in any applicable prospectus supplement.

General. Our Third Restated Declaration of Trust authorizes the issuance of an unlimited number of our common shares. As of January 31, 2010, (i) there were 73,965,593 of our common shares outstanding and 20,852,895 limited partnership units of IRET Properties, our operating partnership, outstanding, of which

20,075,000 were then eligible for redemption for cash or (at our option) for common shares on a one-to-one basis; (ii) we had no classes or series of shares outstanding other than our common shares and our Series A Preferred Shares, and (iii) there were no warrants, stock options or other contractual arrangements, other than the limited partnership units, requiring redemption for cash or through the issuance of our common shares or other shares.

Voting Rights. Subject to the provisions of our Third Restated Declaration of Trust regarding the restriction on the transfer of our common shares, our common shares have non-cumulative voting rights at the rate of one vote per common share on all matters submitted to the shareholders, including the election of members of our Board of Trustees.

Our Third Restated Declaration of Trust generally provides that whenever any action is to be taken by the holders of our common shares, including the amendment of our Third Restated Declaration of Trust if such amendment is previously approved by our Board of Trustees, such action will be authorized by a majority of the holders of our common shares present in person or by proxy at a meeting at which a quorum is present, except as otherwise required by law, our Third Restated Declaration of Trust or our Bylaws. Our Third Restated Declaration of Trust further provides the following:

(i) that the following actions will be authorized by the holders of our common shares by the affirmative vote of a majority of our common shares then outstanding and entitled to vote on such action:

- our termination;
- the merger of us with or into another entity;
- our consolidation with one or more other entities into a new entity;
- the disposition of all or substantially all of our assets, and
- the amendment of the Third Restated Declaration of Trust, if such amendment has not been previously approved by our Board of Trustees; and

(ii) that a member of our Board of Trustees may be removed with or without cause by the holders of our common shares by the affirmative vote of not less than two-thirds of our common shares then outstanding and entitled to vote on such matter.

Our Third Restated Declaration of Trust also permits our Board of Trustees, by a two-thirds vote and without any action by the holders of our common shares, to amend our Third Restated Declaration of Trust from time to time as necessary to enable us to continue to qualify as a REIT under the Internal Revenue Code.

Dividend, Distribution, Liquidation and Other Rights. Subject to the preferential rights of any preferred shares that we may issue in the future and the provisions of the Third Restated Declaration of Trust regarding the restriction on the transfer of our common shares, holders of our common shares are entitled to receive dividends on their common shares if, as and when authorized and declared by the Board of Trustees and to share ratably in our assets legally available for distribution to our shareholders in the event of our liquidation, dissolution or winding up after payment of, or adequate provision for, all known debts and liabilities. Our common shares have equal dividend, distribution, liquidation and other rights. Our common shares have no preference, conversion, exchange, sinking fund or redemption rights.

Ownership and Transfer Restrictions. Our common shares are fully transferable and alienable subject only to certain restrictions set forth in our Third Restated Declaration of Trust that are intended to help preserve our status as a REIT for federal income tax purposes. For a summary description of these restrictions, see “Restrictions on Ownership and Transfer” below. These ownership limitations could have the effect of precluding, and may be used to preclude, a third party from obtaining control over us.

Transfer Agent and Registrar. We act as our own transfer agent and registrar with respect to our common shares.

DESCRIPTION OF PREFERRED SHARES

Our Third Restated Declaration of Trust authorizes the issuance of an unlimited number of preferred shares. Our Board of Trustees has the authority, under our Third Restated Declaration of Trust, to establish by resolution one or more classes or series of preferred shares and to fix the number and relative rights and preferences of such different classes or series of preferred shares without any further vote or action by our shareholders. Unless otherwise designated in our Third Restated Declaration of Trust, all series of preferred shares will constitute a single class of preferred shares.

The following description of our preferred shares sets forth certain general terms and provisions of the preferred shares to which any prospectus supplement may relate. The statements below describing our preferred shares are in all respects subject to and qualified in their entirety by reference to our Third Restated Declaration of Trust and our Bylaws, including any amendments thereto, and by reference to any applicable designating amendment to our Third Restated Declaration of Trust establishing terms of a class or series of our preferred shares. Our preferred shares will, when issued, be fully paid and nonassessable.

General

As our Board of Trustees has the power to establish the rights and preferences of each class or series of our preferred shares, our Board of Trustees may afford the holders of any class or series of our preferred shares rights and preferences, voting or otherwise, senior to the rights of holders of our common shares. The issuance of classes or series of preferred shares could have the effect of delaying or preventing a change of control that might involve a premium price for shareholders or otherwise be in their best interest.

The rights and preferences of our preferred shares of each class or series will be fixed by the designating amendment relating to the class or series. A prospectus supplement, relating to each class or series, will specify the terms of our preferred shares, as follows:

- the title and stated value of our preferred shares;
- the number of preferred shares offered, the liquidation preference per share and the offering price of our preferred shares;
- the dividend rate(s), period(s) and/or payment date(s) or method(s) of calculation applicable to our preferred shares;
 - the date from which dividends on our preferred shares will accumulate, if applicable;
 - the procedures for any auction and remarketing, if any, for our preferred shares;
 - the provision for a sinking fund, if any, for our preferred shares;
 - the provision for redemption, if applicable, of our preferred shares;
 - any listing of our preferred shares on any securities exchange or association;
 - the transfer agent and registrar for our preferred shares;
- the terms and conditions, if applicable, upon which our preferred shares will be convertible into our common shares, including the conversion price (or manner of calculation) and conversion period;

- a discussion of certain material federal income tax considerations applicable to our preferred shares;
- the relative ranking and preferences of our preferred shares as to dividend rights and rights upon the liquidation, dissolution or winding up of our affairs;

- any limitation on issuance of any series of our preferred shares ranking senior to or on a parity with the series of preferred shares as to dividend rights and rights upon the liquidation, dissolution or winding up of our affairs;
- any limitations on direct or beneficial ownership and restrictions on transfer of our preferred shares, in each case as may be appropriate to preserve our status as a REIT; and
 - any other specific terms, preferences, rights, limitations or restrictions of our preferred shares.

Rank

Unless otherwise specified in the applicable prospectus supplement, our preferred shares will, with respect to rights to the payment of dividends and distribution of our assets and rights upon our liquidation, dissolution or winding up, rank (i) senior to our common shares and all other equity securities the terms of which provide that such equity securities are junior to our preferred shares; (ii) on a parity with all equity securities other than those referred to in clauses (i) and (iii); and (iii) junior to all equity securities the terms of which provide that such equity securities will rank senior to our preferred shares.

Dividends

Holders of our preferred shares will be entitled to receive, when, as and if authorized by our Board of Trustees and declared by us, out of our assets legally available for payment, cash dividends at rates and on dates as will be set forth in the applicable prospectus supplement. Each dividend will be payable to holders of record as they appear in our records on the record dates as will be fixed by our Board of Trustees.

Dividends on any class or series of our preferred shares may be cumulative or non-cumulative, as provided in the applicable prospectus supplement. Dividends, if cumulative, will accumulate from and after the date set forth in the applicable prospectus supplement. If our Board of Trustees fails to authorize a dividend payable on a dividend payment date on any class or series of our preferred shares for which dividends are noncumulative, then the holders of that class or series of our preferred shares will have no right to receive a dividend in respect of the dividend period ending on that dividend payment date, and we will have no obligation to pay the dividend accrued for that period, whether or not dividends on that class or series are declared payable on any future dividend payment date.

If any class or series of our preferred shares are outstanding, no full dividends will be authorized or paid or set apart for payment on any other class or series of our preferred shares ranking, as to dividends, on a parity with or junior to that class or series of our preferred shares for any period unless (i) with respect to classes or series of our preferred shares having a cumulative dividend, full cumulative dividends have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, or (ii) with respect to classes or series of our preferred shares not having a cumulative dividend, full dividends have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment thereof set aside for payment,

When dividends are not paid in full (or a sum sufficient for their full payment is not so set apart) upon any class or series of our preferred shares and any other class or series of our preferred shares ranking on a parity as to dividends with that class or series of our preferred shares, all dividends declared upon that class or series of preferred shares and any other class or series of our preferred shares ranking on a parity as to dividends with those preferred shares will be authorized pro rata so that the amount of dividends authorized per share on that class or series of preferred shares and that other class or series of our preferred shares will in all cases bear to each other the same ratio that accrued and unpaid dividends per share on that class or series of our preferred shares (which will not include any accumulation in respect of unpaid dividends for prior dividend periods if those preferred shares do not have a cumulative dividend) and that other class or series of our preferred shares bear to each other. No interest, or sum of money in lieu of interest, will be payable in respect of any dividend payment or payments on our preferred shares of that series that may be in arrears.

Except as provided in the immediately preceding paragraph, unless (i) with respect to classes or series of our preferred shares having a cumulative dividend, full cumulative dividen