

NEW YORK MORTGAGE TRUST INC

Form 424B5

August 15, 2012

The information in this preliminary prospectus supplement is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities, and they are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale thereof is not permitted.

Subject to Completion

Preliminary Prospectus Supplement, dated August 15, 2012

FILED PURSUANT TO RULE 424(b)(5)

SEC FILE NO. 333-179314

PROSPECTUS SUPPLEMENT

(To prospectus dated April 11, 2012)

10,000,000 Shares

Common Stock

This is a public offering of common stock of New York Mortgage Trust, Inc. We are selling 10,000,000 shares of common stock. Our common stock is listed on The Nasdaq Capital Market, or Nasdaq, under the symbol "NYMT." On August 14, 2012, the last reported sale price of our common stock on Nasdaq was \$6.91 per share.

To preserve our status as a real estate investment trust for federal income tax purposes, we impose restrictions on the ownership and transfer of our common stock. See "Summary—Change in Ownership Limit under Our Charter" in this prospectus supplement and "Description of Common Stock—Restrictions on Ownership and Transfer" in the accompanying prospectus.

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described under "Risk Factors" on page S-3 of this prospectus supplement and in our Annual Report on Form 10-K for the year ended December 31, 2011, as updated by our Quarterly Reports on Form 10-Q for the periods ended March 31, 2012 and June 30, 2012, before making an investment decision.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

|           | Price to Public | Underwriting<br>Discount and<br>Commission | Proceeds to Us (1) |
|-----------|-----------------|--|--------------------|
| Per Share | \$              | \$   | \$                 |
| Total     | \$              | \$   | \$                 |

(1) Before deducting approximately \$175,000 in estimated expenses payable by us.

We have granted the underwriters an option to purchase a maximum of 1,500,000 additional shares of common stock from us at the public offering price, less the underwriting discount, within 30 days after the date of this prospectus supplement.

The underwriters expect to deliver the shares of common stock to investors in this offering on or about August , 2012.

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Sole Bookrunning Manager  
Deutsche Bank Securities

The date of this prospectus supplement is August , 2012.

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You should rely only on the information contained or incorporated by reference in this prospectus supplement or the accompanying prospectus. We have not, and the underwriters have not, authorized anyone to provide you with different information. If any one provides you with different or inconsistent information, you should not rely on it.

We are not, and the underwriters are not, making an offer of the common stock covered by this prospectus supplement and the accompanying prospectus in any jurisdiction where the offer thereof is not permitted.

You should assume that the information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus and in the documents incorporated by reference herein and therein is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.

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## ABOUT THIS PROSPECTUS SUPPLEMENT

This document consists of two parts. The first part is the prospectus supplement, which describes the specific terms of the offering, and also adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference into this prospectus supplement and the accompanying prospectus. The second part is the accompanying prospectus, which describes more general information, some of which may not apply to this offering. Before you buy any shares of our common stock, it is important for you to read and consider the information contained in this prospectus supplement and the accompanying prospectus together with additional information described under the headings “Incorporation by Reference of Information Filed with the SEC” and “Where You Can Find More Information.”

If the information set forth in this prospectus supplement differs in any way from the information set forth in the accompanying prospectus, you should rely on the information set forth in this prospectus supplement.

In this prospectus supplement, we refer to New York Mortgage Trust, Inc., together with its consolidated subsidiaries, as “we,” “us,” “the Company,” or “our,” unless we specifically state otherwise or the context indicates otherwise. In addition, the following defines certain of the commonly used terms in this prospectus supplement.

- “RMBS” refers to residential mortgage-backed securities that are adjustable-rate, hybrid adjustable-rate, fixed-rate, interest only and inverse interest only or principal only securities;
- “Agency RMBS” refers to RMBS representing interests in or obligations backed by pools of residential mortgage loans issued or guaranteed by a federally chartered corporation, such as the Federal National Mortgage Association (“Fannie Mae”) or the Federal Home Loan Mortgage Corporation (“Freddie Mac”), or an agency of the U.S. government, such as the Government National Mortgage Association (“Ginnie Mae”);
- “IOs” refers collectively to interest only and inverse interest only mortgage-backed securities that represent the right to the interest component of the cash flow from a pool of mortgage loans;
- “POs” refers to mortgage-backed securities that represent the right to the principal component of the cash flow from a pool of mortgage loans;
- “ARMs” refers to adjustable-rate residential mortgage loans;
  - “prime ARM loans” refers to prime credit quality residential ARM loans held in securitization trusts; and
- “CMBS” refers to commercial mortgage-backed securities comprised of commercial mortgage pass-through securities, as well as IO or PO securities that represent the right to a specific component of the cash flow from a pool of commercial mortgage loans.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

When used in this prospectus supplement and in the accompanying prospectus, in future filings with the Securities and Exchange Commission, or SEC, or in press releases or other written or oral communications, statements which are not historical in nature, including those containing words such as “believe,” “expect,” “anticipate,” “estimate,” “plan,” “continue,” “intend,” “should,” “would,” “could,” “goal,” “objective,” “will,” “may” or similar expressions, are intended to identify “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or Exchange Act, and, as such, may involve known and unknown risks, uncertainties and assumptions.

Forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations are subject to risks and uncertainties and can change as a result of many possible events or factors, not all of which are known to us. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. The following factors are examples of those that could cause actual results to vary from our forward-looking statements: changes in interest rates and the market value of our securities; the impact of the downgrade of the long-term credit ratings of the United States, Fannie Mae, Freddie Mac and Ginnie Mae; market volatility; changes in the prepayment rates on the mortgage loans underlying our investment securities; increased rates of default and/or decreased recovery rates on our assets; our ability to borrow to finance our assets; changes in government regulations affecting our business; our ability to maintain our qualification as a real estate investment trust for federal tax purposes; our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended; and risks associated with investing in real estate assets, including changes in business conditions and the general economy. These and other risks, uncertainties and factors, including the risk factors described in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2011, as updated by those risk factors included in our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2012 and June 30, 2012 and our subsequent filings under the Exchange Act, could cause our actual results to differ materially from those projected in any forward-looking statements we make. All forward-looking statements speak only as of the date on which they are made. New risks and uncertainties arise over time and it is not possible to predict those events or how they may affect us. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## SUMMARY

The following summary is qualified in its entirety by the more detailed information included elsewhere or incorporated by reference into this prospectus supplement and the accompanying prospectus. Because this is a summary, it may not contain all of the information that is important to you. You should read the entire prospectus supplement and the accompanying prospectus, including the section entitled “Risk Factors” and the documents incorporated by reference herein before making an investment decision.

We are a real estate investment trust, or REIT, in the business of acquiring, investing in, financing and managing primarily mortgage-related assets and, to a lesser extent, financial assets. Our objective is to manage a portfolio of investments that will deliver stable distributions to our stockholders over diverse economic conditions. We intend to achieve this objective through a combination of net interest margin and net realized capital gains from our investment portfolio. Our investment portfolio includes investments sourced from distressed markets over recent years that create the potential for capital appreciation, as well as more traditional types of mortgage-related investments, such as Agency RMBS consisting of adjustable-rate and hybrid adjustable-rate RMBS, which we sometimes refer to as Agency ARMs, and Agency RMBS comprised of IOs, which we sometimes refer to as Agency IOs, that generate interest income.

Under our investment strategy, our targeted assets currently include Agency ARMs, Agency IOs and CMBS backed by commercial mortgage loans on multi-family properties, which we sometimes refer to as multi-family CMBS. Subject to maintaining our qualification as a REIT, we also may opportunistically acquire and manage various other types of mortgage-related and financial assets that we believe will compensate us appropriately for the risks associated with them, including, without limitation, non-Agency RMBS (which may include IOs and POs), collateralized mortgage obligations, residential mortgage loans and certain commercial real estate-related debt investments.

As part of our investment strategy, we are a party to separate investment management agreements with The Midway Group, L.P., or Midway, and RiverBanc, LLC, or RiverBanc, pursuant to which Midway and RiverBanc provide investment management services with respect to our investments in Agency IOs and multi-family CMBS, respectively.

We have elected to be taxed as a REIT and have complied, and intend to continue to comply, with the provisions of the Internal Revenue Code of 1986, as amended, or the Code, with respect thereto. Accordingly, we do not expect to be subject to federal income tax on our REIT taxable income that we currently distribute to our stockholders if certain asset, income and ownership tests and recordkeeping requirements are fulfilled. Even if we maintain our qualification as a REIT, we expect to be subject to some federal, state and local taxes on our income generated in our taxable REIT subsidiaries, or TRSs.

Our principal executive offices are located at 52 Vanderbilt Avenue, Suite 403, New York, New York 10017, and our telephone number is (212) 792-0107. Our website address is [www.nymtrust.com](http://www.nymtrust.com). Our website and the information contained at or connected to our website do not constitute a part of this prospectus supplement or the accompanying prospectus

### Change in Ownership Limit under Our Charter

On May 4, 2012, our Board of Directors, pursuant to Section 7.2.8 of Article VII of our charter, approved (i) an increase in the Common Stock Ownership Limit (as defined in our charter) to 9.9% (in value or number of shares, whichever is more restrictive), of the aggregate of the outstanding shares of Common Stock (as defined in our charter), and (ii) an increase in the Aggregate Stock Ownership Limit (as defined in our charter) to 9.9% in value of the aggregate of the outstanding shares of Capital Stock (as defined in our charter). The change in the Common Stock

Ownership Limit and the Aggregate Stock Ownership Limit became effective on the same day it was approved by our Board of Directors. Each of the Common Stock Ownership Limit and the Aggregate Stock Ownership Limit was previously set at 5.0%.

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## THE OFFERING

|  |  |
|--|--|
| Common Stock Offered                     | 10,000,000 shares  |
| Shares Outstanding After the Offering(1) | 32,544,374 shares  |
| Use of Proceeds                          | We intend to use the net proceeds of this offering to acquire certain of our target assets, including multi-family CMBS and Agency RMBS. With respect to the net proceeds that will be used to acquire Agency RMBS, we expect to borrow against the Agency RMBS through repurchase agreements and to use the proceeds of the borrowings to acquire additional Agency RMBS. We may also use net proceeds for general working capital purposes, including the repayment of indebtedness. See “Use of Proceeds.”  |
| Listing                                  | Our common stock is listed on Nasdaq under the symbol “NYMT.”  |
| Dividend Policy                          | We intend to pay quarterly dividends and to make distributions to our common stockholders in amounts such that all or substantially all of our REIT taxable income in each year, subject to certain adjustments, is distributed. We have not, however, established a minimum dividend payment level for shares of our common stock. All distributions to holders of our common stock will be made at the discretion of our Board of Directors and will depend on our earnings, our financial condition, maintenance of our REIT status and such other factors as our Board of Directors may deem relevant from time to time. There are no assurances of our ability to pay dividends in the future at the current rate or at all. See “Risk Factors.”  |
| Ownership Restrictions                   | Our charter provides that generally no person may own, or be deemed to own by virtue of the attribution provisions of the Code, either (i) more than 9.9% in value of the aggregate of our outstanding shares of capital stock or (ii) more than 9.9% in value or in number of shares, whichever is more restrictive, of the aggregate of our outstanding common stock. Our Board of Directors has discretion to grant exemptions from the 9.9% ownership limitation, subject to such terms and conditions as it deems appropriate. These restrictions on ownership of our common stock and capital stock are intended to preserve our qualification as a REIT for federal income tax purposes. See “Summary—Change in Ownership Limit under Our Charter” in this prospectus supplement and “Description of Common Stock—Restrictions on Ownership and Transfer” |

and “Material Federal Income Tax Considerations” in the accompanying prospectus.

Risk Factors

An investment in our common stock is subject to a high degree of risk. Please refer to “Risk Factors” and other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should carefully consider before investing in shares of our common stock.

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(1) Assumes no exercise of the underwriters’ option to purchase additional shares of common stock. Based on 22,544,374 shares of common stock outstanding as of August 13, 2012.

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## RISK FACTORS

Investing in our shares of common stock involves a high degree of risk. Please see the risks described under the caption “Risk Factors” beginning on page 18 of our Annual Report on Form 10-K for the year ended December 31, 2011, on page 62 of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2012 and on page 70 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2012, which documents are incorporated by reference into this prospectus supplement. Such risks are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect us and the market value of our common stock. The risks described could affect our business, financial condition, liquidity, results of operations and the market value of our common stock. In such a case, you may lose all or part of your original investment. You should carefully consider the risks described in these reports, as well as other information and data set forth in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein before making an investment decision with respect to the shares of our common stock.

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## USE OF PROCEEDS

We estimate that the net proceeds of this offering will be approximately \$      million (or approximately \$      million if the underwriters exercise their option to purchase additional shares in full) after deducting the underwriting discount and commissions, as well as estimated offering expenses of approximately \$175,000 payable by us.

We expect to use the net proceeds of this offering to acquire certain of our targeted assets, including multi-family CMBS and Agency RMBS. With respect to the net proceeds that will be used to acquire Agency RMBS, we expect to borrow against the Agency RMBS through repurchase agreements and to use the proceeds of the borrowings to acquire additional Agency RMBS. We may also use net proceeds for general working capital purposes, including the repayment of indebtedness.

Pending these uses, we intend to maintain the net offering proceeds in interest-bearing, short-term, marketable investment grade securities or money market accounts or (interest or non-interest bearing) checking (or escrow) accounts that are consistent with our intention to maintain our qualification as a REIT. These investments may include, for example, government securities other than agency securities, certificates of deposit and interest-bearing bank deposits. These investments are expected to provide a lower net return than we will seek to achieve from our targeted assets.

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## CAPITALIZATION

The following table sets forth our cash and cash equivalents and total capitalization and total liabilities and equity as of June 30, 2012 (1) on an actual basis (2) on an as adjusted basis to give effect to our sale of common stock on July 17, 2012, and (3) on a pro forma as adjusted basis to give effect to our sale of common stock on July 17, 2012, and the consummation of this offering. This table should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our condensed consolidated financial statements and the notes thereto incorporated by reference in this prospectus supplement.

|   | As of June 30, 2012 |                     |                     |
|---|---------------------|---------------------|---------------------|
|   | Actual              | As                  | Pro Forma           |
|   |                     | Adjusted(1)         | As Adjusted(1)(2)   |
| (Dollars in thousands) unaudited  |                     |                     |                     |
| Cash and cash equivalents   | \$8,621             | \$ 41,757           | \$                  |
| <b>Debt:</b>  |                     |                     |                     |
| Financing arrangements, portfolio investments   | \$ 138,871          | \$ 138,871          | \$ 138,871          |
| Residential collateralized debt obligations(3)  | 190,637             | 190,637             | 190,637             |
| Multi-family collateralized debt obligations, at fair value(4)  | 3,768,116           | 3,768,116           | 3,768,116           |
| Securitized debt  | 26,044              | 26,044              | 26,044              |
| Subordinated debentures   | 45,000              | 45,000              | 45,000              |
| <b>Total debt</b>   | <b>\$4,168,668</b>  | <b>\$ 4,168,668</b> | <b>\$ 4,168,668</b> |
| <b>Stockholders’ equity</b>   |                     |                     |                     |
| Common stock, \$0.01 par value, 400,000,000 shares authorized, 17,369,374 shares issued and outstanding actual; 22,544,374 as adjusted and 32,544,374 pro forma as adjusted shares issued and outstanding | \$ 174              | \$ 225              | \$ 325              |
| Additional paid-in capital  | 165,785             | 198,870             |                     |
| Accumulated other comprehensive income  | 15,919              | 15,919              | 15,919              |
| Accumulated deficit   | (68,887 )           | (68,887 )           | (68,887 )           |
| <b>Total stockholders’ equity</b>   | <b>\$ 112,991</b>   | <b>\$ 146,127</b>   | <b>\$</b>           |
| <b>Total capitalization</b>   | <b>\$4,281,659</b>  | <b>\$ 4,314,795</b> | <b>\$</b>           |

(1) The as adjusted and pro forma as adjusted amounts reflects the sale of 5,175,000 shares of common stock in our public offering that closed on July 17, 2012 (including 675,000 shares issued pursuant to the exercise in full of the underwriters’ option to purchase additional shares) at a net price of \$6.432 per share, and the receipt of total net proceeds of approximately \$33,135,600, after deducting underwriting discounts and commissions, as well as offering expenses paid by us.

(2) The pro forma as adjusted amount also reflects the net proceeds to us from the sale of 10,000,000 shares of common stock in this offering at a net price of \$ per share, and the receipt of the total estimated net proceeds of approximately \$ (assuming no exercise of the underwriters’ option to purchase additional shares and after deducting underwriting discounts and estimated offering expenses payable by us).

- (3) The residential collateralized debt obligations (“Residential CDO”) permanently finance our residential mortgage loans held in securitization trusts. For financial reporting purposes, the ARM loans held as collateral in the securitization trusts are recorded as our assets and the Residential CDO is recorded as our debt. We have completed four securitizations since inception, the first three of which were accounted for as a permanent financing and the fourth of which was accounted for as a sale and, accordingly, not included in our financial statements. We had a net equity investment of \$7.2 million in these residential securitization trusts as of June 30, 2012.
- (4) Multi-family collateralized debt obligations, at fair value, or Multi-Family CDOs, are comprised of Multi-Family CDOs that permanently finance the multi-family mortgage loans held in the COMM 2009-K3 Mortgage Trust (“K-3 Series”), the FREMF 2010-K6 Mortgage Trust, Multi-Family Mortgage Pass Through Certificates, Series 2010-K6 (the “K-6 Series”), and the FREMF 2012-K18 Mortgage Trust, Multi-Family Mortgage Pass Through Certificates, Series 2012-K18 (the “K-18 Series” and together with the K-3 Series and the K-6 Series, the “Consolidated K-Series”), each of which is a Freddie Mac-sponsored multifamily mortgage loan securitization. As of June 30, 2012, we owned 100% of the first loss securities and certain IO securities issued by the Consolidated K-Series. Based on a number of factors, we determined that the Consolidated K-Series were variable interest entities, or VIE, that we were the primary beneficiary of each VIE within the Consolidated K-Series and that the Consolidated K-Series met the criteria for consolidation. Accordingly, we have consolidated these securitizations and their related debt, interest income and expense in our financial statements. As of June 30, 2012, we had a net investment in the Consolidated K-Series of \$86.8 million.

ADDITIONAL FEDERAL INCOME TAX CONSIDERATIONS

We have entered into a securitization transaction that is structured as a taxable mortgage pool. As such, this securitization transaction may produce excess inclusion income. For a discussion of the federal income tax considerations to us and our stockholders with respect to excess inclusion income, see “Material Federal Income Tax Considerations—Requirements for Qualification” in the accompanying prospectus.

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## UNDERWRITING

In accordance with the terms and conditions contained in the underwriting agreement, we have agreed to sell to each of the underwriters named below, and each of the underwriters, for which Deutsche Bank Securities Inc. is acting as the representative, has, severally, and not jointly, agreed to purchase from us on a firm commitment basis the shares offered in this offering set forth opposite their respective names below:

| Underwriters                  | Number of<br>Shares |
|-------------------------------|---------------------|
| Deutsche Bank Securities Inc. |                     |
|                               |                     |
|                               |                     |
| Total                         | 10,000,000          |

We have been advised by the representative of the underwriters that the underwriters propose to offer the shares directly to the public at the public offering price set forth on the cover page of this prospectus supplement. Any shares sold by the underwriters to securities dealers will be sold at the public offering price less a selling concession not in excess of \$            per share.

The underwriting agreement provides that the underwriters' obligations to purchase the shares are subject to conditions contained in the underwriting agreement. The underwriters are obligated to purchase and pay for all of the shares offered by this prospectus other than those covered by the option to purchase additional shares, if any of these securities are purchased.

## Underwriting Discount

The following table summarizes the underwriting discount to be paid to the underwriters by us.

|  | Total, Without<br>Option<br>Exercise | Total, With<br>Full<br>Option<br>Exercise |
|--|--------------------------------------|---|
| Underwriting discount to be paid to the underwriters by us for the shares ( % of gross proceeds) | \$                                   | \$  |

The expenses of the offering, exclusive of the underwriting discount, are estimated at approximately \$175,000 and payable by us.

We are not under any contractual obligation to engage any of the underwriters to provide investment banking, lending, asset management or financial advisory services to us in the future. If any of the underwriters provide such services to us after this offering, we may pay such underwriter fair and reasonable fees that would be determined at that time in an arm's length negotiation. However, we will not enter into any agreement with any of the underwriters, nor will we pay any fees for such services to any of the underwriters, prior to the date which is 90 days after the date of this offering, unless the Financial Industry Regulatory Authority, Inc. determines that such payment would not be deemed underwriters' compensation in connection with the offering.



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### Option to Purchase Additional Shares

We have granted to the underwriters an option, exercisable not later than 30 days after the date of this prospectus, to purchase up to 1,500,000 shares at the public offering price, less the underwriting discount, set forth on the cover page of this prospectus supplement. If any additional shares are purchased pursuant to this option, the underwriters will offer these additional shares on the same terms as those on which the other shares are being offered hereby.

### Lock-Ups

We have agreed that we will not directly or indirectly, issue, sell, offer, agree to sell, contract or grant any option to sell (including, without limitation, pursuant to any short sale), pledge, make any short sale of, maintain any short position with respect to, transfer, establish or maintain an open “put equivalent position” within the meaning of Rule 16a-1(h) under the Exchange Act, enter into any swap, derivative transaction or other arrangement (whether such transaction is to be settled by delivery of our common stock, other securities, cash or other consideration) that transfers to another, in whole or in part, any of the economic consequences of ownership, or otherwise dispose of any shares of our common stock, options or warrants to acquire shares of our common stock, or securities exchangeable or exercisable for or convertible into shares of our common stock, or publicly disclose the intention to take any such action, without, in each case, the prior written consent of the representative for a period of 30 days after the date of this prospectus. However, we may, during this 30-day “lock-up” period, grant shares of common stock or options to purchase shares of our common stock to our directors, officers, employees and consultants in the ordinary course under our existing 2010 Stock Incentive Plan.

Each of our directors and executive officers has agreed that they will not sell or offer or contract to sell or offer, grant any option or warrant for the sale of, assign, transfer, pledge, hypothecate, or otherwise encumber or dispose of any legal or beneficial interest in any shares of our common stock, enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of our common stock or other securities, in cash or otherwise, or publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of the representative for a period of 30 days after the date of this prospectus. However, each of our directors and executive officers may transfer or dispose of our shares during this 30-day “lock-up” period, provided, that (i) such transfer shall not involve a disposition for value, (ii) the transferee agrees to be bound in writing by the restrictions set forth in this paragraph for the remainder of the 30-day “lock-up” period prior to such transfer, and (iii) no filing by the transferor or transferee under the Exchange Act is required or voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the 30-day “lock-up” period).

### Stabilization, Short Positions and Penalty Bids

The underwriters may engage in over-allotment, syndicate covering transactions, stabilizing transactions and penalty bids or purchases for the purpose of pegging, fixing or maintaining the price of our common stock:

- Over-allotment involves sales by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by an underwriter is not greater than the number of shares that it may purchase in the option granted to the underwriters to purchase additional shares. In a naked short position, the number of shares involved is greater than the number of shares in the option granted to the underwriters to purchase additional shares. An underwriter may close out any short position by exercising its option, in whole or in part, or by purchasing shares in the open market.

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Syndicate covering transactions involve purchases of securities in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of securities needed to close out the short position, the representative will consider, among other things, the price of the securities available for purchase in the open market as compared to the price at which it may purchase the securities through the option granted to the underwriters to purchase additional shares. If the underwriters sell more securities than could be covered by the option granted to the underwriters to purchase additional shares, which would constitute a naked short position, the position can only be closed out by buying securities in the open market. A naked short position is more likely to be created if the representative is concerned that there could be downward pressure on the price of the securities in the open market after pricing that could adversely affect investors who purchase in the offering.

- Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specific maximum.
- Penalty bids permit the representative to reclaim a selling concession from a syndicate member when the securities originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These syndicate covering transactions, stabilizing transactions and penalty bids may have the effect of raising or maintaining the market prices of our securities or preventing or retarding a decline in the market prices of our securities. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on Nasdaq, in the over-the-counter market or on any trading market and, if commenced, may be discontinued at any time.

Neither we nor the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the prices of our securities. In addition, neither we nor the underwriters make any representation that the underwriters will engage in these stabilizing transactions or that any transactions, once commenced, will not be discontinued without notice.

In the ordinary course of business, the underwriters or their affiliates have engaged and may in the future engage in various financing, commercial banking and investment banking services with, and provide financial advisory services to, us and our affiliates, for which they have received or may receive customary fees and expenses, including acting as underwriters for our equity offerings. We are a party to a master repurchase agreement and an international swaps and derivatives contract with Deutsche Bank Securities Inc. or its affiliates pursuant to which Deutsche Bank Securities Inc. or its affiliates may receive customary fees and expenses. As of the date of this prospectus supplement, we had no borrowings or notional amounts outstanding under these agreements.

#### Indemnification

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make with respect to any of these liabilities.

This prospectus supplement and the accompanying prospectus in electronic format may be made available on websites maintained by the underwriter as selling group member, and the underwriter or selling group member may distribute the prospectus supplement and accompanying prospectus electronically.

#### Nasdaq Listing

The shares are listed on Nasdaq under the symbol "NYMT."

#### Selling Restrictions

European Economic Area. In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date") an offer of the shares to the public may not be made in that Relevant Member State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that an offer to the public in that Relevant Member State of any shares may be made at any time under the following exemptions under the Prospectus Directive if they have been implemented in the Relevant Member State:

- (a) if the offer of shares is addressed solely to persons who are "qualified investors" within the meaning of Article 2(1)(e) of the Prospectus Directive ("Qualified Investors"). Qualified Investors, including:
  - (i) legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities; and

(ii) any legal entity which meets two or more of the following criteria: (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or

(b) in any other circumstances falling within Article 3 (2) of the Prospectus Directive; provided, that no such offer of shares shall result in a requirement for the publication by the company or any underwriter of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision: (a) the expression an "offer of shares to the public" in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares and shall include the placing of shares through financial intermediaries, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State; and (b) the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

#### Notice to Prospective Investors in the United Kingdom

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the Prospectus Directive) (i) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "Order") and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

## WHERE YOU CAN FIND MORE INFORMATION

We are subject to the informational requirements of the Exchange Act, and, in accordance with those requirements, file reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information, as well as the registration statement and the exhibits and schedules thereto, can be inspected at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. Copies of such materials may be obtained at prescribed rates. Information about the operation of the public reference facilities may be obtained by calling the SEC at 1-800-SEC-0330. The SEC also maintains a website that contains reports, proxy statements and other information regarding registrants, including us, that file such information electronically with the SEC. The address of the SEC's website address is [www.sec.gov](http://www.sec.gov). Our common stock is listed on Nasdaq and our corporate website address is [www.nymtrust.com](http://www.nymtrust.com). Our internet website and the information contained therein or connected thereto do not constitute a part of this prospectus supplement, the accompanying prospectus or any amendment or supplement thereto.

We have filed with the SEC a registration statement on Form S-3 under the Securities Act with respect to the securities offered by this prospectus supplement and the accompanying prospectus. This prospectus supplement and the accompanying prospectus, which form a part of the registration statement, do not contain all of the information set forth in the registration statement and its exhibits and schedules, certain parts of which are omitted in accordance with the SEC's rules and regulations. For further information about us and our common stock, we refer you to the registration statement and to such exhibits and schedules. Statements contained in this prospectus supplement and the accompanying prospectus concerning the provisions of any document filed as an exhibit to the registration statement or otherwise filed with the SEC are not necessarily complete, and in each instance reference is made to the copy of such document so filed. Each such statement is qualified in its entirety by such reference.

## INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC

The SEC allows us to "incorporate by reference" into this prospectus supplement and the accompanying prospectus the information we file with the SEC, which means that we can disclose important business, financial and other information to you by referring you to other documents separately filed with the SEC. The information incorporated by reference is considered to be part of this prospectus supplement and the accompanying prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus supplement and before the date that the offering of the securities by means of this prospectus supplement and the accompanying prospectus is terminated will automatically update and, where applicable, supersede any information contained in this prospectus supplement and the accompanying prospectus or incorporated by reference in this prospectus supplement and the accompanying prospectus.

We incorporate by reference the following documents or information filed with the SEC and any subsequent filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, after the date of the initial registration statement and prior to completion of the offering of the common stock described in this prospectus supplement and the accompanying prospectus (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed on March 12, 2012, as amended by our Annual Report on Form 10-K/A for the fiscal year ended December 31, 2011, filed on July 9, 2012;
- our Quarterly Reports on Form 10-Q for the quarter ended March 31, 2012, filed on May 4, 2012, and for the quarter ended June 30, 2012, filed on August 9, 2012;
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our Current Reports on Form 8-K filed on January 5, 2012, January 19, 2012 (with respect to Item 5.02 only), January 20, 2012, February 1, 2012, March 16, 2012, March 19, 2012, March 30, 2012 (with respect to Item 5.02 only), April 18, 2012 (with respect to Item 5.02 only), May 21, 2012, as amended by our Current Report on Form 8-K/A filed on May 22, 2012, May 24, 2012 (with respect to Item 8.01 only), May 31, 2012, June 11, 2012, June 15, 2012, July 11, 2012 (with respect to Item 8.01 only), and July 17, 2012;

- the information specifically incorporated by reference into our Annual Report on Form 10-K for the fiscal year ended December 31, 2011 from our Definitive Proxy Statement on Schedule 14A, filed on April 4, 2012; and
- the description of our capital stock in our Registration Statement on Form 8-A filed on June 3, 2008.

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We will provide without charge to each person, including any beneficial owner, to whom this prospectus supplement and the accompanying prospectus are delivered, upon his or her written or oral request, a copy of any or all documents referred to above that have been or may be incorporated by reference into this prospectus supplement and the accompanying prospectus, excluding exhibits to those documents unless they are specifically incorporated by reference into those documents. You may request those documents from us by writing to New York Mortgage Trust, Inc., c/o Corporate Secretary, 52 Vanderbilt Avenue, Suite 403, New York, New York 10017 or by calling our Corporate Secretary at (212) 792-0107.

#### EXPERTS

The consolidated financial statements incorporated by reference in this prospectus supplement and elsewhere in the registration statement have been so incorporated by reference in reliance upon the report of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in giving said report.

#### LEGAL MATTERS

Certain legal matters in connection with this offering will be passed upon for us by Hunton & Williams LLP and, with respect to certain matters of Maryland law, Venable LLP. Certain legal matters will be passed upon for the underwriters by Skadden, Arps, Slate, Meagher & Flom LLP.



PROSPECTUS

\$250,000,000

Common Stock  
Preferred Stock  
Debt Securities

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We may offer and sell, from time to time, in one or more offerings, up to an aggregate of \$250,000,000 of the common stock, preferred stock and debt securities described in this prospectus. We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

The specific terms of any securities to be offered, and the specific manner in which they may be offered, will be described in one or more supplements to this prospectus. This prospectus may not be used to consummate sales of any of these securities unless it is accompanied by a prospectus supplement. Before investing, you should carefully read this prospectus and any related prospectus supplement.

Our shares of common stock are listed on the Nasdaq Capital Market under the symbol "NYMT." The last reported sale price of our common stock on the Nasdaq Capital Market on April 5, 2012, was \$6.66 per share.

To preserve our qualification as a real estate investment trust, or REIT, for federal income tax purposes, we impose certain restrictions on the ownership and transfer of our capital stock. See "Description of Common Stock — Restrictions on Ownership and Transfer" and "Description of Preferred Stock — Restrictions on Ownership and Transfer; Change of Control Provisions."

Investing in our securities involves substantial risks. You should carefully read and consider the information under "Risk Factors" on page 3 of this prospectus and any prospectus supplement before making a decision to purchase these securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of 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 11, 2012.

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You should rely only on the information contained in this prospectus and the accompanying prospectus supplement or incorporated by reference in these documents. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained or incorporated by reference in this prospectus or the accompanying prospectus supplement. If anyone provides you with different, inconsistent or unauthorized information or representations, you must not rely on them. This prospectus and the accompanying prospectus supplement are an offer to sell only the securities offered by these documents, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus or any prospectus supplement is current only as of the date on the front of those documents.

## ABOUT THIS PROSPECTUS

This prospectus is part of a shelf registration statement that we filed with the Securities and Exchange Commission, or the SEC. Under this shelf registration statement, we may offer and sell any combination of our common stock, preferred stock and debt securities in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we offer to sell securities under this shelf registration statement, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may add, update or change information contained in this prospectus. Before you buy any of our securities, it is important for you to consider the information contained in this prospectus and any prospectus supplement together with additional information described under the headings “Incorporation By Reference Of Information Filed With The SEC” and “Where You Can Find More Information.”

The SEC allows us to incorporate by reference information that we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. You should rely only on the information incorporated by reference or set forth in this prospectus or any prospectus supplement. We have not authorized anyone to provide you with information different from that contained in this prospectus. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representation. This prospectus is an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information in this prospectus or any prospectus supplement is accurate only as of the date of the document incorporated by reference. Our business, financial condition, results of operations and prospects may have changed since that date.

In this prospectus, we refer to New York Mortgage Trust, Inc., together with its consolidated subsidiaries, as “we,” “us,” “Company,” or “our,” unless we specifically state otherwise or the context indicates otherwise. In addition, the following defines certain of the commonly used terms in this prospectus: “RMBS” refers to residential adjustable-rate, hybrid adjustable-rate, fixed-rate, interest only and inverse interest only, and principal only mortgage-backed securities; “Agency RMBS” refers to RMBS representing interests in or obligations backed by pools of residential mortgage loans issued or guaranteed by a federally chartered corporation, such as the Federal National Mortgage Association (“Fannie Mae”) or the Federal Home Loan Mortgage Corporation (“Freddie Mac”), or an agency of the U.S. government, such as the Government National Mortgage Association (“Ginnie Mae”); “IOs” refers collectively to interest only and inverse interest only mortgage-backed securities that represent the right to the interest component of the cash flow from a pool of mortgage loans; “POs” refers to mortgage-backed securities that represent the right to the principal component of the cash flow from a pool of mortgage loans; “ARMs” refers to adjustable-rate residential mortgage loans; “prime ARM loans” refers to prime credit quality residential ARM loans (“prime ARM loans”) held in securitization trusts; and “CMBS” refers to commercial mortgage-backed securities comprised of commercial mortgage pass-through securities, as well as IO or PO securities that represent the right to a specific component of the cash flow from a pool of commercial mortgage loans.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING INFORMATION

When used in this prospectus and in any accompanying prospectus supplement, in future filings with the SEC or in press releases or other written or oral communications, statements which are not historical in nature, including those containing words such as “believe,” “expect,” “anticipate,” “estimate,” “plan,” “continue,” “intend,” “should,” “would,” “could,” “objective,” “will,” “may” or similar expressions, are intended to identify “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or Exchange Act, and, as such, may involve known and unknown risks, uncertainties and assumptions.

Forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations are subject to risks and uncertainties and can change as a result of many possible events or factors, not all of which are known to us. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. The following factors are examples of those that could cause actual results to vary from our forward-looking statements: changes in interest rates and the market value of our securities; the impact of the downgrade of the long-term credit ratings of the U.S., Fannie Mae, Freddie Mac, and Ginnie Mae; market volatility; changes in the prepayment rates on the mortgage loans underlying our investment securities; increased rates of default and/or decreased recovery rates on our assets; our ability to borrow to finance our assets; changes in government regulations affecting our business; our ability to maintain our qualification as a real estate investment trust for federal tax purposes; our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended; and risks associated with investing in real estate assets, including changes in business conditions and the general economy. These and other risks, uncertainties and factors, including the risk factors described in Item 1A of our most recent Annual Report on Form 10-K, as updated by our subsequent filings under the Exchange Act, could cause our actual results to differ materially from those projected in any forward-looking statements we make. All forward-looking statements speak only as of the date on which they are made. New risks and uncertainties arise over time and it is not possible to predict those events or how they may affect us. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## OUR COMPANY

We are a real estate investment trust, or REIT, in the business of acquiring, investing in, financing and managing primarily mortgage-related and, to a lesser extent, financial assets. Our objective is to manage a portfolio of investments that will deliver stable distributions to our stockholders over diverse economic conditions. We intend to achieve this objective through a combination of net interest margin and net realized capital gains from our investment portfolio. Our portfolio includes investments sourced from distressed markets over recent years that create the potential for capital appreciation, as well as more traditional types of mortgage-related investments, such as Agency RMBS consisting of adjustable-rate and hybrid adjustable-rate RMBS, which we sometimes refer to as Agency ARMs, and Agency RMBS comprised of IOs, which we sometimes refer to as Agency IOs, that generate interest income.

We commenced operations as a vertically integrated mortgage origination and portfolio investment manager in 2004 upon the completion of our initial public offering. Facing increasingly difficult operating conditions, we elected to exit the mortgage origination business in 2007 to preserve our capital and focus on our existing mortgage securities portfolio. In January 2008, concurrent with the private placement of \$20 million of our preferred stock to JMP Group Inc. and certain of its affiliates, we engaged Harvest Capital Strategies LLC (“HCS”) (formerly known as JMP Asset Management LLC), an affiliate of JMP Group Inc., to serve as our investment advisor for the purpose of helping us increase our capital base and source certain types of alternative investments or nontraditional mortgage related investments that could provide significant net realized capital gains.

Since 2009, we have endeavored to build a diversified investment portfolio that includes elements of interest rate and credit risk, as we believe a portfolio diversified among interest rate and credit risks is best suited to delivering stable cash flows over various economic cycles. In 2009 and 2010, we invested in several alternative assets, including a collateralized loan obligation, RMBS backed by prime jumbo and Alternative A-paper, or non-Agency RMBS, individual loans and distressed residential single family mortgage loans. In 2011, we refined our investment strategy from one focused on a broad range of alternative assets sponsored by HCS to an investment strategy focused on residential and multi-family loans and securities. In connection with this focus, we entered into separate investment management agreements with The Midway Group, L.P. and RiverBanc, LLC to provide investment management services with respect to certain of our investment strategies, including our investments in Agency IOs and CMBS backed by commercial mortgage loans on multi-family properties, which we sometimes refer to as multi-family CMBS. In connection with the refinement of our investment focus away from the alternative assets sourced by HCS, we ended our advisory relationship with HCS on December 31, 2011.

Under our investment strategy, our targeted assets currently include:

- Agency ARMs and Agency IOs; and
- multi-family CMBS.

Subject to maintaining our qualification as a REIT, we also may opportunistically acquire and manage various other types of mortgage-related and financial assets that we believe will compensate us appropriately for the risks associated with them, including, without limitation, non-Agency RMBS (which may include IOs and POs), collateralized mortgage obligations, residential mortgage loans and certain commercial real estate-related debt investments.

We have elected to be taxed as a REIT and have complied, and intend to continue to comply, with the provisions of the Internal Revenue Code of 1986, as amended, or Internal Revenue Code, with respect thereto. Accordingly, we do not expect to be subject to federal income tax on our REIT taxable income that we currently distribute to our stockholders if certain asset, income and ownership tests and recordkeeping requirements are fulfilled. Even if we

maintain our qualification as a REIT, we expect to be subject to some federal, state and local taxes on our income generated in our taxable REIT subsidiaries, or TRSs.

## Corporate Offices

We are a Maryland corporation that was formed in 2003. Our principal executive offices are located at 52 Vanderbilt Avenue, Suite 403, New York, New York 10017, and our telephone number is (212) 792-0107. Our website is [www.nymtrust.com](http://www.nymtrust.com). Our website and the information contained at or connected to our website do not constitute a part of this prospectus or any accompanying prospectus supplement.

## RISK FACTORS

Investing in our securities involves substantial risks, including the risk that you might lose your entire investment. Before making an investment decision, you should carefully read and consider the information set forth under the heading “Risk Factors” in our most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q (which information is incorporated by reference in this prospectus), as well as the other information contained or incorporated by reference in this prospectus or in any prospectus supplement hereto. See “Where You Can Find More Information” below. Any one of the risks discussed could cause actual results to differ materially from expectations and could adversely affect our business, financial condition and results of operations. Additional risks and uncertainties not presently known to us or not identified, may also materially and adversely affect our business, financial condition and results of operations.

## USE OF PROCEEDS

Unless otherwise indicated in an accompanying prospectus supplement, we intend to use the net proceeds from the sale of securities offered by this prospectus and the accompanying prospectus supplement to acquire our target assets and for general corporate purposes, including the repayment of indebtedness.

## DESCRIPTION OF THE SECURITIES WE MAY OFFER

This prospectus contains a summary description of the common stock, preferred stock and debt securities that we may offer from time to time. As further described in this prospectus, these summary descriptions are not meant to be complete descriptions of each security. The particular terms of any security will be described in the accompanying prospectus supplement and other offering material. The accompanying prospectus supplement may update, change or add to the terms and conditions of the securities as described in this prospectus.

## DESCRIPTION OF COMMON STOCK

The following summary description of our common stock does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law, our charter and our bylaws, copies of which are filed as exhibits to the registration statement of which this prospectus is a part. See “Where You Can Find More Information.”

### General

Our charter provides that we may issue up to 400,000,000 shares of common stock, par value \$0.01 per share. As of March 31, 2012, 14,175,494 shares of common stock were issued and outstanding. Under Maryland law, our stockholders are not generally liable for our debts or obligations. Our charter authorizes our board of directors to amend our charter to increase or decrease the aggregate number of shares of capital stock of any class or series that we have the authority to issue, without stockholder approval.

### Voting Rights of Common Stock

Subject to the provisions of our charter regarding restrictions on the transfer and ownership of shares of common stock, each outstanding share of common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors, and, except as provided with respect to any other class or series of shares of our stock, the holders of our common stock possess the exclusive voting power. There is no cumulative voting in the election of directors, which means that the holders of a majority of our outstanding shares of common stock can elect all of the directors then standing for election. Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, or engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders holding at least two-thirds of the shares entitled to vote on the matter, unless a lesser percentage (but not less than a majority of all the votes entitled to be cast on the matter) is set forth in the corporation’s charter. Our charter provides for approval by a majority of all the votes entitled to be cast on the matter for the matters described in the preceding sentence.

### Dividends, Liquidation and Other Rights

All of our outstanding shares of common stock are duly authorized, fully paid and nonassessable. Holders of our shares of common stock are entitled to receive dividends when authorized by our board of directors and declared by us out of assets legally available for the payment of dividends. They also are entitled to share ratably in our assets legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up, after payment of or adequate provision for all of our known debts and liabilities. These rights are subject to the preferential rights of any other class or series of our stock and to the provisions of our charter regarding restrictions on transfer and ownership of our stock.

Holders of our shares of common stock have no appraisal, preference, conversion, exchange, sinking fund or redemption rights and have no preemptive rights to subscribe for any of our securities. Subject to the restrictions on transfer of capital stock contained in our charter and to the ability of the board of directors to create shares of common stock with differing voting rights, all shares of common stock have equal dividend, liquidation and other rights.

### Power to Issue Additional Shares of Common Stock and Preferred Stock

Our charter also authorizes our board of directors to amend our charter to increase or decrease the aggregate number of shares of capital stock of any class or series that we have the authority to issue, to classify and reclassify any unissued shares of our common stock and preferred stock into any other classes or series of classes of our stock, to



establish the number of shares in each class or series and to set the terms, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such class or series. We believe that the power of our board of directors to take these actions provides us with increase