

EPR PROPERTIES  
Form S-8  
June 03, 2013

As filed with the Securities and Exchange Commission on June 3, 2013

Registration No. 333-

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

**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

**EPR PROPERTIES**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**43-1790877**  
(I.R.S. Employer  
Identification No.)

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**909 Walnut Street, Suite 200**

**Kansas City, Missouri**  
(Address of Principal Executive Offices)

**64106**  
(Zip Code)

**EPR Properties 2007 Equity Incentive Plan**

(Full title of the plan)

**Neil E. Sprague**

**Senior Vice President, General Counsel and Secretary**

**EPR Properties**

**909 Walnut Street, Suite 200**

**Kansas City, Missouri 64106**

(Name and address of agent for service)

**(816) 472-1700**

(Telephone number, including area code, of agent for service)

**Copies to:**

**Craig L. Evans**

**Stinson Morrison Hecker LLP**

**1201 Walnut, Suite 2900**

**Kansas City, MO 64106**

**(816) 691-3186**

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.

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

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## CALCULATION OF REGISTRATION FEE

<b>Title of securities to be registered</b>	<b>Amount to be registered (1)</b>	<b>Proposed maximum offering price per share (2)</b>	<b>Proposed maximum aggregate offering price (2)</b>	<b>Amount of registration fee (3)</b>
Common shares of beneficial interest, par value \$0.01 per share	1,700,000 shares	\$52.87	\$89,879,000.00	\$12,259.50

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), such number of shares registered hereby shall include an indeterminate number of common shares that may be issued in connection with a share split, share dividend or similar event, for which no separate consideration will be paid.
- (2) Calculated pursuant to Rules 457(c) and 457(h) under the Securities Act solely for the purpose of calculating the amount of the registration fee, on the basis of the average of the high and low prices of the common shares of beneficial interest of EPR Properties reported on the New York Stock Exchange on May 31, 2013.
- (3) Calculated pursuant to General Instruction E on Form S-8.

**EXPLANATORY NOTE**

This Registration Statement on Form S-8 is being filed by EPR Properties (the Registrant) for the purpose of registering an additional 1,700,000 shares of the Registrant's common shares of beneficial interest authorized for issuance under the EPR Properties 2007 Equity Incentive Plan (formerly known as the Entertainment Properties Trust 2007 Equity Incentive Plan, the Plan), as approved by the Registrant's shareholders at the Registrant's 2013 annual meeting of shareholders.

Pursuant to General Instruction E to Form S-8, this Registration Statement on Form S-8 incorporates by reference the contents of the Registration Statement on Form S-8 (File No. 333-142831) filed by the Registrant on May 11, 2007 and the Registration Statement on Form S-8 (File No. 333-159465) filed by the Registrant on May 22, 2009.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

Not required to be filed with this Registration Statement.

**Item 2. Registrant Information and Employee Plan Annual Information.**

Not required to be filed with this Registration Statement.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents previously filed by the Registrant with the Securities and Exchange Commission (the SEC) are hereby incorporated by reference in this Registration Statement:

The Registrant's Annual Report on Form 10-K for the year ended December 31, 2012;

The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2013;

The Registrant's Current Reports on Form 8-K filed with the SEC on March 14, 2013 and May 15, 2013; and

The description of the Registrant's common shares of beneficial interest contained in the Registrant's Registration Statement on Form 8-A (File No. 001-13561) filed with the SEC on November 4, 1997, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed (other than the portions of those documents furnished or otherwise not deemed to be filed) by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such earlier statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The laws relating to Maryland real estate investment trusts (the Maryland REIT Law ) permit a real estate investment trust to indemnify and advance expenses to its trustees, officers, employees and agents to the same extent permitted by the Maryland General Corporation Law (the MGCL ) for directors and officers of Maryland corporations. The MGCL permits a corporation to indemnify its present and former directors and officers against judgments, penalties, fines, settlements and reasonable expenses incurred in connection with any proceeding to which they may be made, or are threatened to be made, a party by reason of their service in those capacities. However, a Maryland corporation is not permitted to provide this type of indemnification if the following is established:

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

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

in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. Additionally, a Maryland corporation may not indemnify a director or officer for an adverse judgment in a suit by or in the right of that corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. The MGCL permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of the following:

a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation; and

a written undertaking by him or on his behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that this standard of conduct was not met.

The Registrant's officers and trustees are and will be indemnified under its Declaration of Trust against certain liabilities. The Registrant's Declaration of Trust provides that the Registrant will, to the maximum extent permitted by Maryland law in effect from time to time, indemnify: (a) any individual who is a present or former trustee or officer of the Registrant; or (b) any individual who, while a trustee or officer of the Registrant and at the request of the Registrant, serves or has served as a director, officer, shareholder, partner, trustee, employee or agent of any real estate investment trust, corporation, partnership, joint venture, trust, employee benefit plan or any other enterprises against any claim or liability, together with reasonable expenses actually incurred in advance of a final disposition of a legal proceeding, to which such person may become subject or which such person may incur by reason of his or her status as such. The Registrant has the power, with the approval of its Board of Trustees, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Registrant in any of the capacities described in (a) or (b) above and to any employee or agent of the Registrant or its predecessors.

The Registrant has also entered into indemnification agreements with its trustees and certain of its officers providing for procedures for indemnification by the Registrant to the fullest extent permitted by law and advancements by the Registrant of certain expenses and costs relating to claims, suits or proceedings arising from the respective trustee's or officer's service to the Registrant.

The Registrant has obtained trustee's and officers' liability insurance for the purpose of funding the provision of any such indemnification.

The SEC has expressed the opinion that indemnification of trustees, officers or persons otherwise controlling a company for liabilities arising under the Securities Act of 1933, as amended, is against public policy and is therefore unenforceable.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

Exhibit No.	Description
4.1	EPR Properties 2007 Equity Incentive Plan, as amended and restated (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on May 15, 2013)
5.1	Opinion of Stinson Morrison Hecker LLP regarding legality
23.1	Consent of Stinson Morrison Hecker LLP (included in Exhibit 5.1)
23.2	Consent of KPMG LLP
24.1	Power of Attorney (included in the signature page to this Registration Statement)

**Item 9. Undertakings.**

A. The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

*Provided, however,* that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the registration statement is on Form S-8, and the information required to be included in the post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Kansas City, State of Missouri, on this 3rd day of June, 2013.

EPR PROPERTIES,  
a Maryland real estate investment trust

By: /s/ Neil E. Sprague

Name: Neil E. Sprague  
Title: Senior Vice President, General Counsel and  
Secretary



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**POWER OF ATTORNEY**

Each person whose signature appears below constitutes and appoints David M. Brain, Gregory K. Silvers, Mark A. Peterson and Neil E. Sprague, and each of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this Registration Statement, and to any other documents filed with the Securities and Exchange Commission and to file the same, with all exhibits to the Registration Statement and other documents in connection with the Registration Statement, with the Securities and Exchange Commission or any other regulatory authority, grants to the attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, and ratifies and confirms all that the attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue of this power of attorney.

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

By:	/s/ Robert J. Druten Robert J. Druten	Chairman of the Board of Trustees	June 3, 2013
By:	/s/ David M. Brain David M. Brain	President, Chief Executive Officer (Principal Executive Officer) and Trustee	June 3, 2013
By:	/s/ Mark A. Peterson Mark A. Peterson	Senior Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer)	June 3, 2013
By:	/s/ Jack A. Newman. Jack A. Newman, Jr.	Trustee	June 3, 2013
By:	/s/ Barrett Brady Barrett Brady	Trustee	June 3, 2013
By:	/s/ Thomas M. Bloch Thomas M. Bloch	Trustee	June 3, 2013
By:	/s/ Peter C. Brown Peter C. Brown	Trustee	June 3, 2013

**EXHIBIT INDEX**

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