

SUN COMMUNITIES INC

Form S-3/A

May 12, 2009

As filed with the Securities and Exchange Commission on May 12, 2009. Registration No. 333-158623

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

PRE-EFFECTIVE AMENDMENT NO. 1 TO

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

SUN COMMUNITIES, INC.

(Exact name of registrant as specified in its governing instrument)

Maryland

(State or Other Jurisdiction of Incorporation or Organization)

38-2730780

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

Gary A. Shiffman

Chief Executive Officer

27777 Franklin Road

Suite 200

Southfield, Michigan 48034

(248) 208-2500

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies of all correspondence to:

Lee B. Kellert, Esq.

Jaffe, Raitt, Heuer & Weiss, P.C.

27777 Franklin Road

Suite 2500

Southfield, Michigan 48034

(248) 351-3000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement as determined by market conditions.

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, please 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, a non-accelerated filer or a small reporting company. See definition of accelerated filer, large 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

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 (the Securities Act) or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Explanatory Note

We are filing this Pre-Effective Amendment No. 1 to the Registration Statement on Form S-3 (File No. 333-158623) for the purpose of providing an additional undertaking and updating our Exhibit Index.

Part II

Information Not Required in Prospectus

Item 16. Exhibits

The exhibits to the Registration Statement are listed in the Exhibit Index which appears elsewhere in this Registration Statement and is hereby incorporated by reference.

Item 17. Undertakings

The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
 - (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 this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value 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 set forth in this registration statement; and
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

Provided however, that Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement; and

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Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S-3 or Form F-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the Securities offered herein, 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.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

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(5) That, for purposes of determining any liability under the Securities Act of 1933, 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.

(6) The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing 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 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 whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-3 and has duly caused this Pre-Effective Amendment No. 1 to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Southfield, State of Michigan, on May 11, 2009.

SUN COMMUNITIES, INC.,

a Maryland corporation

By: /s/ Karen J. Dearing
Karen J. Dearing, Chief Financial Officer,
Secretary and Principal Accounting Officer

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

| Name | Title | Date |
|---|---|--------------|
| <u>/s/ Gary A. Shiffman</u> Gary A. Shiffman | Chief Executive Officer and Chairman of the Board of Directors | May 12, 2009 |
| * _____ Karen J. Dearing | Executive Vice President, Treasurer, Chief Financial Officer, Secretary and Principal Accounting Officer | May 12, 2009 |
| * _____ Paul D. Lapidés | Director | May 12, 2009 |
| * _____ Ted J. Simon | Director | May 12, 2009 |
| * _____ | Director | |

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Clunet R. Lewis

May 12, 2009

* _____

Director

Ronald L. Piasecki

May 12, 2009

* _____

Arthur A. Weiss

Director

May 12, 2009

* _____

Robert H. Naftaly

Director

May 12, 2009

* _____

Stephanie W. Bergeron

Director

May 12, 2009

By: /s/ Gary A. Shiffman
Gary A. Shiffman
Attorney-in-Fact

INDEX TO EXHIBITS

| Exhibit No. | Description |
|--------------------|--|
| 1.1 | Form of Underwriting Agreement (1) |
| 4.1 | Rights Agreement, dated as of June 2, 2008, between Sun Communities, Inc. and Computershare Trust Company, N.A., as Rights Agent (filed with the SEC on June 3, 2008). |
| 4.2 | Form of Senior Indenture* |
| 4.3 | Form of Subordinated Indenture* |
| 4.4 | Form of Senior Debt Security* |
| 4.5 | Form of Subordinated Debt Security* |
| 4.6 | Form of Securities Warrant Agreement* |
| 5.1 | Opinion of Jaffe, Raitt, Heuer & Weiss, Professional Corporation as to the legality of securities* |
| 8.1 | Opinion of Jaffe, Raitt, Heuer & Weiss, Professional Corporation, as to certain tax matters* |
| 12.1 | Calculation of Ratios of Earnings to Fixed Charges* |
| 23.1 | Consent of Grant Thornton, independent registered public accounting firm* |
| 23.2 | Consent of Jaffe, Raitt, Heuer & Weiss, Professional Corporation (included in Exhibit 5.1) |
| 24.1 | Powers of Attorney* |
| 25.1 | Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended (2) |
| 25.2 | Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended (2) |

***Previously Filed**

(1) If applicable, to be subsequently filed by amendment or as an exhibit to a current report on Form 8-K or other applicable report filed with the SEC and incorporated herein by reference.

(2) To be subsequently filed pursuant to Section 305(b)(2) of the Trust Indenture Act of 1939, as amended.