

ESSEX PROPERTY TRUST INC

Form POSASR

April 08, 2013

As filed with the Securities and Exchange Commission on April 8, 2013

Registration Nos. 333-187561 and 333-187561-01

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

Post-Effective Amendment No. 1 to
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933, AS AMENDED

ESSEX PROPERTY TRUST, INC.
(Exact Name of Registrant as Specified in its Charter)

001-13106
(Commission File Number)

Maryland
(State or Other Jurisdiction of Incorporation)

77-0369576
(I.R.S. Employer Identification No.)

925 East Meadow Drive, Palo Alto, California 94303

(650) 494-3700
(Address, including zip code, and telephone, including area code, or registrar's principal executive offices)

Michael J. Schall
Chief Executive Officer and President
925 East Meadow Drive
Palo Alto, California 94303
(650) 494-3700
(Name, address, including zip code, and telephone number, including area code, of agent for service)

ESSEX PORTFOLIO, L.P.
(Exact Name of Registrant as Specified in its Charter)

333-44467-01
(Commission File Number)

California
(State or Other Jurisdiction of Incorporation)

77-0369575
(I.R.S. Employer Identification No.)

925 East Meadow Drive, Palo Alto, California 94303

(650) 494-3700
(Address, including zip code, and telephone, including area code, or registrar's principal executive offices)

Michael J. Schall
Chief Executive Officer and President
925 East Meadow Drive
Palo Alto, California 94303
(650) 494-3700

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

With copies to:
Stephen J. Schrader
Baker & McKenzie LLP
Two Embarcadero Center, 11th Floor
San Francisco, California 94111-3802
(415) 576-3000

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

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

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

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

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Essex Property Trust, Inc.

Large accelerated filer

Accelerated filer

Non-accelerated filer o Smaller reporting company o

Essex Portfolio, L.P.

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(1)	Amount to be Registered(2)	Proposed maximum Offering Price Per Unit(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of registration fee
Essex Property Trust, Inc. Common Stock(4) Preferred Stock(4) Depository Shares(4), (5) Warrants and Other Rights(4) Stock Purchase Contracts Units (4), (6) Debt Securities (4) Guarantees of the Debt Securities(4), (7)				\$ 0 (3)
Essex Portfolio, L.P. Debt Securities(4)				\$ 0 (3)
TOTAL				\$ 0 (3)

(1) The securities covered by this registration statement may be sold or otherwise distributed separately, together or as units with other securities covered by this registration statement. This registration statement covers offers, sales and other distributions of the securities listed in this table from time to time at prices to be determined, as well as shares of Preferred Stock distributable upon the termination of a deposit arrangement for depository shares so offered or sold, and shares of Common Stock issuable upon the exchange or conversion of shares of Preferred Stock so offered or sold that are exchangeable for or convertible into shares of Common Stock or upon the exercise of Common Stock warrants so offered, sold or distributed. This registration statement also covers shares of Preferred Stock, Depository Shares, shares of Common Stock, Debt Securities, Guarantees and Warrants that may be offered or sold under delayed delivery contracts pursuant to which the counterparty may be required to purchase such securities, as well as such contracts themselves. Such contracts would be issued with the specific securities to which they relate.

(2) Omitted pursuant to Form S-3 General Instruction II.E.

(3) Deferred in reliance upon Rules 456(b) and 457(r) under the Securities Act.

(4) This registration statement covers an indeterminate amount of the securities of each identified class of securities. An unspecified aggregate initial offering price or number of the securities of each identified class is being registered as may from time to time be offered at unspecified prices. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities or that are represented by depository shares.

(5) Each depository share will be issued under a deposit agreement, which will represent an interest in a fractional share or multiple shares of Preferred Stock and will be evidenced by a depository receipt.

(6) Each unit will be issued under a unit agreement and will represent an interest in two or more other securities, which may or may not be separable from each other.

(7)

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Debt Securities issued by Essex Portfolio, L.P. may be accompanied by Guarantees to be issued by Essex Property Trust, Inc. None of the proceeds will be received by Essex Property Trust, Inc. for the Guarantees. Pursuant to Rule 457(n), no separate registration fee is payable in respect of the registration of the guarantees.

Explanatory Note

This Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 (File No. 333-187561) (the “Registration Statement”) of Essex Property Trust, Inc. and Essex Portfolio, L.P. is filed for the purpose of (i) amending the prospectus forming a part of the Registration Statement by adding information about Essex Portfolio, L.P. for purposes of Form S-3 General Instructions I.D.(3) and the possible future offer and sale of debt securities by Essex Portfolio L.P. pursuant to a prospectus supplement that may be filed with respect to the Registration Statement as amended, (ii) making certain changes in the prospectus related to the passage of time, and (iii) filing additional exhibits to the Registration Statement under Item 16 of Part II thereof. Other than the changes described in the preceding sentence, no changes or additions are being made to the Registration Statement. This Post-Effective Amendment No. 1 shall become effective immediately upon filing with the Securities and Exchange Commission. When the prospectus, forming a part of the Registration Statement, is used in connection with prospectus supplements that only involve the offering of securities by Essex Property Trust, Inc., some or all of the sections of the prospectus that relate to Essex Portfolio, L.P. may be omitted, including but not limited to, information under the sections that follow the section “Experts” and financial statements and financial information related to Essex Portfolio, L.P., and information concerning risk factors may only be incorporated by reference.

PROSPECTUS

ESSEX PROPERTY TRUST, INC.
COMMON STOCK
PREFERRED STOCK
DEPOSITARY SHARES
WARRANTS AND OTHER RIGHTS
STOCK PURCHASE CONTRACTS
UNITS
DEBT SECURITIES
GUARANTEES OF DEBT SECURITIES

and

ESSEX PORTFOLIO, L.P.

DEBT SECURITIES

Essex Property Trust, Inc., a Maryland corporation (“Essex” or the “Company”), may from time to time offer, in one or more series or classes, separately or together, and in amounts, at prices and on terms to be set forth in one or more supplements to this prospectus (each, a “Prospectus Supplement”), the following securities:

- common stock;
- preferred stock;
- preferred stock represented by depositary shares;
- warrants and other rights to purchase common stock;
- stock purchase contracts;
- units representing an interest in two or more other securities;
- debt securities; and
- guarantees of debt securities.

Essex Portfolio L.P., a California partnership (the “Operating Partnership”), may from time to time offer in one or more series of debt securities, which may be either senior debt securities (“Senior Securities”) or subordinated debt securities (“Subordinated Securities” and, together with the Senior Securities, the “Debt Securities”), guaranteed by Essex through guarantees (the “Guarantees”) of the Debt Securities. The Debt Securities may be non-convertible or convertible into or exercisable or exchangeable for securities of Essex or the Operating Partnership.

The securities listed above (collectively, the “Offered Securities”) may be offered, separately or together, in separate series, in amounts, at prices and on terms to be set forth in one or more Prospectus Supplements; provided that Essex will guarantee the payment of principal and a premium, if any, and interest on the Debt Securities, to the extent and on the terms described herein and in any accompanying Prospectus Supplement. Under this prospectus, Essex can issue equity securities, debt securities and debt guarantees, and the Operating Partnership can issue only debt securities.

This prospectus describes some of the general terms that may apply to the Offered Securities. The specific terms of any Offered Securities will be described in a Prospectus Supplement. The specific terms may include limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a real estate investment trust (“REIT”) for federal income tax purposes. See “Description of Capital Stock — Restrictions on Transfer.” It is important that you read both this prospectus and the applicable Prospectus Supplement before you invest in the Offered Securities.

The applicable Prospectus Supplement also will contain information, where applicable, about material United States federal income tax considerations relating to, and any listing on a securities exchange of, the Offered Securities covered by such Prospectus Supplement.

The Offered Securities may be offered directly, through agents designated from time to time by Essex, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of the Offered Securities, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them, will be set forth, or will be calculable from the information set forth, in the applicable Prospectus Supplement. See “Plan of Distribution.” No Offered Securities may be sold without delivery of the applicable Prospectus Supplement describing the plan of distribution and the method and terms of the offering of such series of Offered Securities.

Essex's common stock is traded on the New York Stock Exchange, or the NYSE, under the symbol "ESS." On April 4, 2013, the closing sale price of Essex common stock on the NYSE was \$155.73 per share.

YOU SHOULD CONSIDER THE RISKS FACTORS SET FORTH IN THE APPLICABLE PROSPECTUS SUPPLEMENT AND IN THE DOCUMENTS INCORPORATED OR DEEMED TO BE INCORPORATED BY REFERENCE IN THIS PROSPECTUS OR ANY APPLICABLE PROSPECTUS SUPPLEMENTS BEFORE YOU INVEST IN OUR 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 8, 2013

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Neither Essex Property Trust, Inc. nor Essex Portfolio, L.P. have authorized any person to give any information or to make any representation not contained or incorporated by reference in this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus as if we had authorized it.

This prospectus is not an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which it relates and this prospectus is not an offer to sell or the solicitation of an offer to buy securities in any jurisdiction where, or to any person to whom, it is unlawful to make such offer or solicitation. You should not assume that the information contained in this prospectus is correct on any date after the date of this prospectus, even though this prospectus is delivered or shares are sold pursuant to this prospectus on a later date.

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ESSEX AND THE OPERATING PARTNERSHIP

The Company is a Maryland corporation that operates as a self-administered and self-managed real estate investment trust ("REIT"). The Company owns all of its interest in its real estate investments directly or indirectly through Essex Portfolio, L.P., a California limited partnership (the "Operating Partnership"). The Company is the sole general partner of the Operating Partnership and as of December 31, 2012 owned a 94.5% general partnership interest.

The Company has elected to be treated as a REIT for federal income tax purposes, commencing with the year ended December 31, 1994 as Essex completed an initial public offering on June 13, 1994. In order to maintain compliance with REIT tax rules, Essex utilizes taxable REIT subsidiaries for various revenue generating or investment activities. All taxable REIT subsidiaries are consolidated by Essex.

The Company is engaged primarily in the ownership, operation, management, acquisition, development and redevelopment of predominantly apartment communities. As of December 31, 2012, Essex owned or held an interest in 163 communities, aggregating 33,468 units, located along the West Coast, as well as five commercial buildings (totaling approximately 315,900 square feet), and nine active development projects with 2,495 units in various stages of development (collectively, the "Portfolio").

The Company's website address is <http://www.essexpropertytrust.com>. The Company's annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports, and the Proxy Statement for its Annual Meeting of Stockholders are available, free of charge, on its website as soon as practicable after Essex files the reports with the SEC. When the Operating Partnership files annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports, those reports will be available (either on a combined basis with the reports of the Company or separately), free of charge, on the Company's website as soon as practicable after the Operating Partnership files the reports with the SEC.

EXPLANATORY NOTE

This prospectus includes combined disclosure for Essex Property Trust, Inc., a Maryland corporation, and Essex Portfolio, L.P., a California limited partnership of which Essex Property Trust, Inc. is the sole general partner. Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to "we," "us," "our", "our company", "Essex" or "the Company" refer to Essex Property Trust, Inc. together with its consolidated subsidiaries, including Essex Portfolio, L.P. Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to "our or the operating partnership" or "our or the Operating Partnership" refer to Essex Portfolio, L.P. together with its consolidated subsidiaries. When we refer to Essex's "Charter," we mean Essex's articles of incorporation, as amended and supplemented from time to time.

Essex Property Trust, Inc. operates as a real estate investment trust, or REIT, and the general partner of Essex Portfolio, L.P. As of December 31 2012, Essex Property Trust, Inc. owned an approximate 94.5% partnership interest and other limited partners, including some of our directors, executive officers and their affiliates, owned the remaining 5.5% partnership interest (including long term incentive plan units) in Essex Portfolio, L.P. As the sole general partner of Essex Portfolio, L.P., Essex Property Trust, Inc. has the full, exclusive and complete responsibility for the operating partnership's day-to-day management and control.

There are few differences between our company and our operating partnership, which are reflected in the disclosure in this prospectus. We believe it is important to understand the differences between our company and our operating partnership in the context of how Essex Property Trust, Inc. and Essex Portfolio, L.P. operate as an interrelated consolidated company. Essex Property Trust, Inc. is a REIT, whose only material asset is its ownership of partnership interests of Essex Portfolio, L.P. As a result, Essex Property Trust, Inc. does not conduct business itself, other than

acting as the sole general partner of Essex Portfolio, L.P., issuing public equity from time to time and guaranteeing certain debt of Essex Portfolio, L.P. Essex Property Trust, Inc. itself does not hold any indebtedness but guarantees some of the unsecured debt of Essex Portfolio, L.P., as disclosed in this prospectus. Essex Portfolio, L.P. holds substantially all the assets of the company and holds the ownership interests in the company's joint ventures. Essex Portfolio, L.P. conducts the operations of the business and is structured as a partnership with no publicly traded equity. Except for net proceeds from public equity issuances by Essex Property Trust, Inc., which are generally contributed to Essex Portfolio, L.P. in exchange for partnership units, Essex Portfolio, L.P. generates the capital required by the company's business through Essex Portfolio, L.P.'s operations, by Essex Portfolio, L.P.'s direct or indirect incurrence of indebtedness or through the issuance of partnership units.

Noncontrolling interests and stockholders' equity and partners' capital are the main areas of difference between the consolidated financial statements of Essex Property Trust, Inc. and those of Essex Portfolio, L.P. The common partnership and long term incentive plan units in Essex Portfolio, L.P. that are not owned by Essex Property Trust, Inc. are accounted for as partners' capital in Essex Portfolio, L.P.'s financial statements and as noncontrolling interests in Essex Property Trust, Inc.'s financial statements. The noncontrolling interests in Essex Portfolio, L.P.'s financial statements include the interests of joint venture partners. The noncontrolling interests in Essex Property Trust, Inc.'s financial statements include the same noncontrolling interests at the Essex Portfolio, L.P. level as well as the limited partnership unitholders of Essex Portfolio, L.P., not including Essex Property Trust, Inc. The differences between stockholders' equity and partners' capital result from the differences in the equity issued at the Essex Property Trust, Inc. and the Essex Portfolio, L.P. levels.

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SUMMARY HISTORICAL FINANCIAL DATA

The following tables set forth, on a historical basis, certain summary consolidated financial and operating data for Essex Portfolio, L.P. and Essex Property Trust, Inc. and their respective subsidiaries. You should read the following summary historical financial data in conjunction with the consolidated historical financial statements and notes thereto of each of Essex Portfolio, L.P. and Essex Property Trust, Inc. and their respective subsidiaries and "Management's Discussion and Analysis of Financial Condition and Results of Operations," included or incorporated by reference elsewhere in this prospectus.

Essex Portfolio, L.P.

The consolidated balance sheet data as of December 31, 2012 and 2011 and the consolidated statement of income operating data for each of the years in the three-year period ended December 31, 2012 have been derived from the historical consolidated financial statements of Essex Portfolio, L.P. and subsidiaries, which are included in this prospectus and which have been audited by KPMG LLP, an independent registered public accounting firm, whose report with respect thereto is included elsewhere in this prospectus. The consolidated balance sheet data as of December 31, 2010 and the consolidated statement of income operating data for the years ended December 31, 2010 and 2009 have been derived from the historical consolidated financial statements of Essex Portfolio, L.P. and subsidiaries, have also been audited by KPMG LLP. The consolidated balance sheet data as of December 31, 2009 and 2008 and the consolidated statement of income operating data for the year ended December 31, 2008 have been derived from the unaudited historical consolidated financial statements of Essex Portfolio, L.P. and subsidiaries.

	Years Ended December 31,				
	2012	2011	2010	2009	2008
	(\$ in thousands, except per share amounts)				
OPERATING DATA:					
REVENUES					
Rental and other property	\$531,936	\$465,713	\$405,728	\$401,550	\$397,673
Management and other fees	11,489	6,780	4,551	4,325	5,166
	543,425	472,493	410,279	405,875	402,839
EXPENSES					
Property operating expenses	174,088	159,234	143,164	137,457	130,328
Depreciation	170,592	151,428	128,221	116,540	108,221
General and administrative	23,307	20,694	23,255	24,966	24,725
Cost of management and other fees	6,513	4,610	2,707	3,096	2,959
Impairment and other charges	-	-	2,302	13,084	650
	374,500	335,966	299,649	295,143	266,883
Earnings from operations	168,925	136,527	110,630	110,732	135,956
Interest expense before amortization expense	(100,244)	(91,694)	(82,756)	(81,196)	(78,203)
Amortization expense	(11,644)	(11,474)	(4,828)	(4,820)	(6,860)
Interest and other income	13,833	17,139	27,841	13,040	11,337
Gain on remeasurement of co-investments	21,947	-	-	-	-
Equity income (loss) from co-investments	41,745	(467)	(1,715)	670	7,820
(Loss) gain on early retirement of debt	(5,009)	(1,163)	(10)	4,750	3,997
Gain on the sales of real estate	-	-	-	103	4,578
Income before discontinued operations	129,553	48,868	49,162	43,279	78,625
Income from discontinued operations	10,037	8,648	1,620	10,460	5,770
Net income	139,590	57,516	50,782	53,739	84,395

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Net income attributable to noncontrolling interest	(6,347)	(5,571)	(5,770)	(6,107)	(5,943)
Net income attributable to controlling interest	133,243	51,945	45,012	47,632	78,452
Preferred interests distributions - Series F, G, & H	(5,472)	(4,753)	(2,170)	(4,860)	(9,241)
Preferred interests distributions - limited partners	-	(1,650)	(6,300)	(6,300)	(9,909)
Excess (deficit) of the carrying amount of preferred interests redeemed over the cash paid to redeem preferred interests	-	(1,949)	-	49,952	-
Net income available to common unitholders	\$127,771	\$43,593	\$36,542	\$86,424	\$59,302
Per unit data:					
Basic:					
Income before discontinued operations available to common unitholders	\$3.16	\$1.00	\$1.09	\$2.56	\$1.86
Net income available to common unitholders	\$3.43	\$1.25	\$1.14	\$2.91	\$2.06
Weighted average common unit outstanding	37,252	34,774	31,961	29,717	28,809
Diluted:					
Income before discontinued operations available to common unitholders	\$3.15	\$1.00	\$1.09	\$2.56	\$1.86
Net income available to common unitholders	\$3.42	\$1.25	\$1.14	\$2.91	\$2.06
Weighted average common unit outstanding	37,344	34,861	32,028	29,747	28,855
Cash dividend per common unit	\$4.40	\$4.16	\$4.13	\$4.12	\$4.08

