

MONMOUTH REAL ESTATE INVESTMENT CORP
 Form S-8
 October 29, 2002

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

FORM S-8

REGISTRATION STATEMENT UNDER
 THE SECURITIES ACT OF 1933

MONMOUTH REAL ESTATE INVESTMENT CORPORATION
 (Exact name of registrant as specified in its charter)

Delaware 22-1897375
 (State or other jurisdiction of (I.R.S. employer
 incorporation or organization) identification no.)

3499 Route 9, Suite 3C, Freehold, NJ 07728
 (Address of principal executive offices) (Zip code)

MONMOUTH REAL ESTATE INVESTMENT CORPORATION 1997 STOCK OPTION
 PLAN
 (Full title of the plan)

Anna Chew, Controller
 3499 Route 9, Suite 3C, Freehold, NJ 07728
 (Name and address of agent for service)

Telephone number, including area code, of agent for service: 732-
 577-9996

This registration statement shall hereafter become effective in
 accordance with Rule 462 promulgated under the Securities Act of
 1933, as amended.

CALCULATION OF REGISTRATION FEE

Title of Securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock	5,000	\$ 5.25	\$ 26,250	
(\$0.01 par value)	65,000	5.50	357,500	
	10,000	5.85	58,500	
	65,000	6.765	439,725	
	300,000	7.13	2,139,000	
	20,000	7.25	145,000	
	780,000	6.965 (3)	5,432,700	
	<u>1,245,000</u>		<u>8,598,675</u>	\$ 791.08
	=====		=====	=====

(1) Pursuant to Rule 416(a), this registration statement includes such indeterminate shares as may become subject to options under the 1997 Stock Option Plan as a result of the adjustment provisions therein.

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(2) Estimated pursuant to Rule 457 solely for the purpose of determining the registration fee. The price is based upon the exercise price of the outstanding but unexercised options.

(3) Estimated pursuant to Rule 457 solely for the purpose of determining the registration fee. The price is based upon the high and low prices as reported on the NASDAQ National Market System on October 25, 2002.

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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information*

Item 2. Registrant Information and Employee Plan Annual Information*

* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from the registration statement in accordance with Rule 428 under the Securities Act of 1933 and the Note to Part I of Form S-8.

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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. INCORPORATION OF DOCUMENTS BY REFERENCE

Monmouth Real Estate Investment Corporation (the "Registrant") hereby incorporates by reference in this registration statement the following documents:

(a) The Registrant's most recent annual report on Form 10-K for the year ended September 30, 2001 filed pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act, including reports on Form 10-Q for the periods ended December 31, 2001, March 31, 2002 and June 30, 2002.

(c) The description of the Registrant's Class A common shares, \$.01 par value, which is contained in a registration statement filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to

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this registration statement which indicates that all securities offered hereby have been sold or which deregisters all securities 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.

Item 4. DESCRIPTION OF SECURITIES

Not Applicable.

Item 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not Applicable.

Item 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145 of the General Corporation Law of the State of Delaware provides, in general, that a corporation incorporated under the laws of the State of Delaware, such as the Registrant, may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than a derivative action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable

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cause to believe such person's conduct was unlawful. In the case of a derivative action, a Delaware corporation may indemnify any such person against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or any other court in which such action was brought determines such person is fairly and reasonable entitled to indemnity for such expenses.

Article XII of the Registrant's Certificate of Incorporation and Amendments thereto states:

"To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that this Article XII shall not eliminate or limit the liability

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of a director (i) for any breach of such director's duty of loyalty to the Corporation nor its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Title 8, Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which such director derived an improper personal benefit. Failure of the Corporation to qualify as an REIT under the REIT Provisions of the Internal Revenue Code shall not render the directors liable to any stockholder or any other person. Any repeal or modification of this Article XII by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification."

Article VI Section2 of the Registrant's By-laws and Amendments thereto states:

"The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or investigation, whether civil, criminal or administrative, and whether external or internal to the corporation (other than a judicial action or suit brought by or in the right of the Corporation), by reason of the fact that he or she is or was an Agent, against all expenses, liability and loss (including attorneys' fees, judgments, fines, excise taxes imposed under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or penalties and amounts paid or to be paid in settlement) actually and reasonably incurred by the Agent in connection with such action, suit, proceeding or investigation, or any appeal therein, if the Agent acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or here conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Agent did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, that the Agent had reasonable cause to believe that his or her conduct was unlawful."

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Article VI Section 3 of the Registrant's By-laws and Amendments thereto states:

"The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed judicial action or suit brought by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was an Agent, against expenses (including attorneys' fees) and amounts paid in settlement actually

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and reasonably incurred by such person in connection with the defense, settlement or appeal of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper."

In addition, the Registrant have entered into indemnification agreements with its officers and directors which contain provisions which are in some respects broader than the specific indemnification provisions contained in Section 145 of the General Corporation Law of the State of Delaware.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed 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.

Item 7. EXEMPTION FROM REGISTRATION CLAIMED

Not Applicable.

Item 8. EXHIBITS

The following are the Exhibits included in this Registration Statement:

4.1 Monmouth Real Estate Investment Corporation's 1997 Stock Option Plan. Incorporated herein by reference to the Registrant's Definitive Proxy Statement dated March 20, 1997, filed with the Securities and Exchange Commission on March 21, 1997.

5 Opinion of Blackwell Sanders Peper Martin LLP regarding legality.

23.1 Consent of Blackwell Sanders Peper Martin LLP (included in Exhibit 5).

23.2 Consent of KPMG LLP.

24 Power of Attorney.

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Item 9. UNDERTAKINGS

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(a) RULE 415 OFFERING

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 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 thereto) 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 percent 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-3 or Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in 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 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) FILING INCORPORATING SUBSEQUENT EXCHANGE ACT DOCUMENTS BY REFERENCE

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act

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of 1933, each filing of the Registrant's annual report

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pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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) REQUEST FOR ACCELERATION OF EFFECTIVE DATE OR FILING OF REGISTRATION STATEMENT ON FORM S-8

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 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 of 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 Securities 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 of 1933, as amended, 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 Borough of Freehold, State of New Jersey on September 25, 2002.

MONMOUTH REAL ESTATE INVESTMENT CORPORATION

By: /s/ Eugene W. Landy
EUGENE W. LANDY
Chairman of the Board,
President and Director

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on September 25, 2002.

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Signature	Title
/s/ Eugene W. Landy Eugene W. Landy	Chairman of the Board, President and Director (Principal Executive Officer)
/s/Cynthia J. Morgenstern Cynthia J. Mortenstern	Executive Vice President and Director
/s/ Ernest V. Bencivenga Ernest V. Bencivenga	Treasurer and Director
/s/Anna T. Chew Anna T. Chew	Controller and Director (Principal Financial Officer)
/s/Daniel D. Cronheim Daniel D. Cronheim	Director
/s/Matthew I. Hirsch Matthew I. Hirsch	Director
/s/Charles P. Kaempffer Charles P. Kaempffer	Director
/s/Samuel A. Landy Samuel A. Landy	Director
/s/John R. Sampson John R. Sampson	Director
/s/ Peter J. Weidhorn Peter J. Weidhorn	Director

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EXHIBIT INDEX

- 4.1 Monmouth Real Estate Investment Corporation's 1997 Stock Option Plan. Incorporated herein by reference to the Registrant's Definitive Proxy Statement dated March 20, 1997, filed with the Securities and Exchange Commission on March 21, 1997.
- 5 Opinion of Blackwell Sanders Peper Martin LLP regarding legality.
- 23.1 Consent of Blackwell Sanders Peper Martin LLP (included in Exhibit 5).
- 23.2 Consent of KPMG LLP.
- 24 Power of Attorney.

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EXHIBIT 5

LETTERHEAD OF BLACKWELL SANDERS PEPPER MARTIN LLP

October 28, 2002

Monmouth Real Estate Investment Corporation
3499 Route 9, Suite 3C
Freehold, NJ 07728

Ladies and Gentlemen:

We have acted as counsel to Monmouth Real Estate Investment Corporation, a Delaware corporation (the "Company"), in connection with the filing of a registration statement by the Company on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended, registering 1,245,000 shares (the "Shares") of Common Stock of the Company, \$.01 par value per share, to be issued to eligible participants in accordance with the terms of the Monmouth Real Estate Investment Corporation 1997 Stock Option Plan (the "Plan").

In connection with the foregoing, we have examined such documents, corporate records and other instruments as we have deemed necessary or appropriate in connection with this opinion. Based upon and subject to the foregoing, we are of the opinion that the Shares, when sold and issued in accordance with the Plan, will be, legally issued, fully paid and non-assessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/Blackwell Sanders Peper Martin LLP
Blackwell Sanders Peper Martin LLP

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EXHIBIT 23.2

INDEPENDENT ACCOUNTANTS' CONSENT

The Board of Directors
Monmouth Real Estate Investment Corporation:

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We consent to incorporation by reference in the registration statement on Form S-8, of Monmouth Real Estate Investment Corporation, pertaining to the Monmouth Real Estate Investment Corporation 1997 Stock Option Plan, of our report dated December 14, 2001, relating to the balance sheets of Monmouth Real Estate Investment Corporation as of September 30, 2001 and 2000 and the related statements of income, shareholders' equity, and cash flows for each of the years in the three-year period ended September 30, 2001, and the related schedule, which report appears in the September 30, 2001 annual report on Form 10-K of Monmouth Real Estate Investment Corporation.

/s/KPMG LLP
KPMG LLP

Short Hills, New Jersey
October 23, 2002

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EXHIBIT 24

POWER OF ATTORNEY

Each person executing this Power of Attorney hereby appoints Eugene W. Landy and Anna T. Chew, or either of them, as his or her attorney-in-fact to execute and to file such amendments to this Form S-8 Registration Statement as such attorneys-in-fact, or either of them, may deem appropriate or withdraw from the registration process this Registration Statement.

This Power of Attorney has been signed by the following persons in the capacities indicated on September 25, 2002.

Signature	Title
/s/ Eugene W. Landy Eugene W. Landy	Chairman of the Board, President and Director (Principal Executive Officer)
/s/Cynthia J. Morgenstern Cynthia J. Mortenstern	Executive Vice President and Director
/s/ Ernest V. Bencivenga Ernest V. Bencivenga	Treasurer and Director
/s/Anna T. Chew Anna T. Chew	Controller and Director (Principal Financial Officer)
/s/Daniel D. Cronheim	

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Daniel D. Cronheim Director

/s/Matthew I. Hirsch
Matthew I. Hirsch Director

/s/Charles P. Kaempffer
Charles P. Kaempffer Director

/s/Samuel A. Landy
Samuel A. Landy Director

/s/John R. Sampson
John R. Sampson Director

/s/ Peter J. Weidhorn
Peter J. Weidhorn Director

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