

HORTON D R INC /DE/
Form 8-A12B/A
September 24, 2009

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

**FORM 8-A/A
AMENDMENT NO. 4
FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES
PURSUANT TO SECTION 12(b) OR 12(g) OF THE
SECURITIES EXCHANGE ACT OF 1934
D.R. HORTON, INC.**

(Exact name of registrant as specified in its charter)

Delaware

75-2386963

(State of incorporation or organization)

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

**301 Commerce Street
Suite 500, Fort Worth, Texas**

76102

(Address of principal executive offices)

(Zip Code)

If this form relates to the registration of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c), please check the following box. **p**

If this form relates to the registration of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d), please check the following box. **o**

Securities Act registration statement file number to which this form relates:

Not Applicable

(if applicable)

Securities to be registered pursuant to Section 12(b) of the Act:

Title of each class
to be so registered

Name of each exchange on which
each class is to be registered
New York Stock Exchange

Common Stock, par value \$0.01 per share

Securities to be registered pursuant to Section 12(g) of the Act:

None

(Title of Class)

D.R. HORTON, INC.

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1. Description of Registrant's Securities to be Registered.

The securities registered hereunder are common stock, par value \$0.01 per share of D.R. Horton, Inc., a Delaware corporation (the Company). The Company's authorized capital stock is 1,000,000,000 shares of common stock and 30,000,000 shares of preferred stock, \$0.10 par value.

Holders of the Company's common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders. The vote of the holders of a majority of the stock represented at a meeting at which a quorum is present is generally required to take stockholder action, unless a greater vote is required by law. The holders are not entitled to cumulative voting in the election of directors. Directors are elected by the affirmative vote of the majority of votes cast at a meeting at which a quorum is present, except that if the number of nominees exceeds the number of directors to be elected, the directors are elected by a plurality of the shares represented in person or by proxy at the meeting and entitled to vote. A majority of the votes cast means that the number of shares voted for a director must exceed the number of votes cast against that director.

Holders of the Company's common stock have no preemptive rights. They are entitled to such dividends as may be declared by the Company's board of directors out of funds legally available for such purpose. The common stock is not entitled to any sinking fund, redemption or conversion provisions. On the Company's liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in the Company's net assets remaining after the payment of all creditors and liquidation preferences of preferred stock, if any. The outstanding shares of common stock are duly authorized, validly issued, fully paid and nonassessable.

The transfer agent and registrar for the common stock is American Stock Transfer & Trust Company, LLC.

The following provisions in the Company's charter or bylaws may make a takeover of the Company more difficult:
an article in the Company's charter prohibiting stockholder action by written consent;

an article in the Company's charter requiring the affirmative vote of the holders of two-thirds of the outstanding shares of common stock to remove a director;

a bylaw limiting the persons who may call special meetings of stockholders to the Company's board of directors or a committee authorized to call a meeting by the board or the bylaws; and

bylaws establishing an advance written notice procedure for stockholders seeking to nominate candidates for election to the board of directors or for proposing matters which can be acted upon at stockholders' meetings.

These provisions may delay stockholder actions with respect to business combinations and the election of new members to the Company's board of directors. As such, the provisions could discourage open market purchases of the Company's common stock because a stockholder who desires to participate in a business combination or elect a new director may consider them disadvantageous. Additionally, the issuance of preferred stock could delay or prevent a change of control or other corporate action.

The Company's board of directors is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of the Company's preferred stock in one or more series, and by filing a certificate pursuant to the applicable law of the State of Delaware, to fix the designations, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof, including without limitation:

the title of the series of preferred stock;

any limit upon the number of shares of the series of preferred stock which may be issued;

the preference, if any, to which holders of the series of preferred stock will be entitled upon the Company's liquidation;

the date or dates on which the Company will be required or permitted to redeem the preferred stock;

the terms, if any, on which the Company or holders of the preferred stock will have the option to cause the preferred stock to be redeemed or purchased;

the voting rights, if any, of the holders of the preferred stock;

the dividends, if any, which will be payable with regard to the series of preferred stock, which may be fixed dividends or participating dividends and may be cumulative or non-cumulative;

the right, if any, of holders of the preferred stock to convert it into another class of the Company's stock or securities, including provisions intended to prevent dilution of those conversion rights;

any provisions by which the Company will be required or permitted to make payments to a sinking fund to be used to redeem preferred stock or a purchase fund to be used to purchase preferred stock; and

any other material terms of the preferred stock.

The number of authorized shares of preferred stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the shares of the Company's common stock, without a vote of the holders of the preferred stock, or of any series thereof, unless a vote of any such holders is required pursuant to the certificate or certificates establishing the series of preferred stock. Holders of shares of preferred stock will not have preemptive rights.

The Company's board of directors has adopted a Section 382 rights agreement to protect certain tax benefits. As a result, the Company issued one preferred share purchase right for each outstanding share of common stock at the close of business on August 31, 2009 and the Company will issue one preferred share purchase right for each share of common stock that the Company issues after August 31, 2009. The description and terms of the rights are set forth in a Section 382 rights agreement between the Company and American Stock Transfer & Trust Company, LLC, as rights agent.

The Section 382 rights agreement is intended to act as a deterrent to any person or group acquiring beneficial ownership of 4.9% or more of the Company's outstanding common stock within the meaning of Section 382 of the Internal Revenue Code and the regulations promulgated thereunder (an "acquiring person") without the approval of the Company's board of directors. Stockholders who beneficially owned 4.9% or more of the Company's outstanding common stock as of the close of business on August 19, 2009 will not trigger the Section 382 rights agreement so long as they do not acquire any additional shares of common stock at a time when they still beneficially own 4.9% or more of the Company's outstanding common stock. The Company's board of directors may, in its sole discretion, also exempt any person from being deemed an acquiring person for purposes of the Section 382 rights agreement.

The rights will not initially be exercisable and will not be transferable except in connection with a transfer of shares of the Company's common stock. Subject to exceptions specified in the Section 382 rights agreement, the rights will separate from the Company's common stock and become exercisable upon the earlier of:

ten business days following a public announcement that a person has become an acquiring person; or

ten business days, or such later date as the Company's board of directors may determine prior to the time that any person becomes an acquiring person, following the commencement of a tender offer or exchange offer that, if completed, would result in a person becoming an acquiring person.

If the rights become exercisable, each right will initially be exercisable to purchase from the Company one ten-thousandth of a share of Series A junior participating preferred stock at a purchase price of \$80.00, subject to adjustment. If a person becomes an acquiring person, each right, other than the rights that are, or (under certain circumstances specified in the Section 382 rights agreement) were, beneficially owned by the acquiring person and certain related parties (which will be null and void), will thereafter be exercisable to purchase from the Company a number of shares of the Company's common stock having a market value of two times the purchase price of \$80.00, subject to adjustment.

The rights and the Section 382 rights agreement will expire on the earliest of (i) August 19, 2019; (ii) the time at which the rights are redeemed pursuant to the Section 382 rights agreement; (iii) the time at which the rights are exchanged in full pursuant to the Section 382 rights agreement; (iv) the effective date of the repeal of Section 382 of the Internal Revenue Code, or any successor provision or replacement provision, if the Company's board of directors determines that the Section 382 rights agreement is no longer necessary for the preservation of the tax benefits; (v) the beginning of a taxable year of which the board of directors determines that the Company has or will have no tax benefits; and (vi) August 19, 2010, if stockholder approval of the Section 382 rights agreement has not been obtained.

For so long as the rights are redeemable, the Company's board of directors may supplement or amend any provision of the Section 382 rights agreement in any respect without the approval of the holders of the rights. From and after the time the rights are no longer redeemable, the board of directors may supplement or amend the Section 382 rights agreement only to cure an ambiguity, to alter time period provisions, to correct inconsistent provisions, or to make any additional changes to the Section 382 rights agreement which the board may deem necessary or desirable, but only to the extent that those changes do not impair or adversely affect any rights holder (other than an acquiring person or certain of their affiliates and transferees) and do not result in the rights again becoming redeemable or the Section 382 rights agreement again becoming amendable other than in accordance with this sentence.

The Section 382 rights agreement may have an anti-takeover effect because it will deter a person or group of persons from acquiring 4.9% or more of the Company's common stock or, in the case of persons or groups that already own 4.9% or more of the Company's common stock, from acquiring any additional shares of the Company's common stock. The Section 382 rights agreement could discourage or prevent a merger, tender offer, proxy contest or accumulations of substantial blocks of shares for which some stockholders might receive a premium above market value. The rights should not interfere with any merger or other business combination approved by the Company's board of directors because the Company's board of directors may redeem the rights at a price of \$0.00001 per right at any time prior to ten calendar days following a public announcement that a person has become an acquiring person.

As a Delaware corporation, the Company is subject to Section 203 of the Delaware General Corporation Law. In general, Section 203 prevents an interested stockholder from engaging in a business combination with the Company for three years following the date that person became an interested stockholder, unless:

before that person became an interested stockholder, the Company's board of directors approved the transaction in which the interested stockholder became an interested stockholder or approved the business combination;

upon completion of the transaction that resulted in the interested stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the Company's voting stock outstanding at the time the transaction commenced, excluding stock held by persons who are both directors and officers of the Company or by certain employee stock plans; or

on or following the date on which that person became an interested stockholder, the business combination is approved by the Company's board of directors and authorized at a meeting of stockholders by the affirmative vote of the holders of at least $66\frac{2}{3}\%$ of the Company's outstanding voting stock excluding shares held by the interested stockholder.

An interested stockholder is generally a person owning 15% or more of the Company's outstanding voting stock. A business combination includes mergers, asset sales and other transactions resulting in a financial benefit to the interested stockholder.

Item 2. Exhibits.

The following exhibits are filed as a part of this Registration Statement:

| Exhibit No. | Description |
|--------------------|---|
| 3.1 | Certificate of Amendment of the Amended and Restated Certificate of Incorporation, as amended, of D.R. Horton, Inc., dated January 31, 2006, and the Amended and Restated Certificate of Incorporation, as amended, of D.R. Horton, Inc., dated March 18, 1992 (incorporated by reference from Exhibit 3.1 to D.R. Horton, Inc.'s Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2005, filed with the SEC on February 2, 2006 (File No. 001-14122)). |
| 3.2 | Amended and Restated Bylaws of D.R. Horton, Inc. (incorporated by reference from Exhibit 3.1 to D.R. Horton, Inc.'s Current Report on Form 8-K, filed with the SEC on August 5, 2009 (File No. 001-14122)). |
| 3.3 | Certificate of Designation, Preferences, and Rights of Series A Junior Participating Preferred Stock of D.R. Horton, Inc. (incorporated by reference from Exhibit 3.1 to D.R. Horton's Form 8-A filed with the SEC on August 20, 2009 (File No. 001-14122)). |
| 4.1 | Section 382 Rights Agreement, dated as of August 19, 2009, between D.R. Horton, Inc. and American Stock Transfer & Trust Company, LLC, as Rights Agent, which includes as Exhibit B the Form of Rights Certificate (incorporated by reference from Exhibit 4.1 to D.R. Horton's Form 8-A filed with the SEC on August 20, 2009 (File No. 001-14122)). |

SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized.

D.R. HORTON, INC.

/s/ Bill W. Wheat
Bill W. Wheat
Executive Vice President and Chief Financial
Officer

Date: September 24, 2009

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