

Forestar Group Inc.  
Form S-8  
May 09, 2018

As filed with the Securities and Exchange Commission on May 9, 2018

Registration No. 333-

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

**FORM S-8**  
**REGISTRATION STATEMENT**  
***UNDER***  
***THE SECURITIES ACT OF 1933***

**FORESTAR GROUP INC.**

**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or Other Jurisdiction of**

**Incorporation or Organization)**

**10700 Pecan Park Blvd., Suite 150**

**26-1336998**  
**(I.R.S. Employer**

**Identification No.)**

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**Austin, Texas 78750**

**(Address of Principal Executive Offices, Zip Code)**

**Forestar Group Inc. 2018 Stock Incentive Plan**

**(Full title of the Plan)**

**Thomas B. Montano**

**Vice President, Corporate Securities Counsel and Secretary**

**10700 Pecan Park Blvd., Suite 150**

**Austin, Texas 78750**

**(512) 433-5200**

**(Name and address of agent for service)**

**(512) 433-5200**

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

*Copy to:*

**Robyn Zolman**

**Gibson, Dunn & Crutcher LLP**

**1801 California Street, Suite 4200**

**Denver, Colorado 80202**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth 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

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

	<b>Amount</b>	<b>Proposed Maximum Offering Price</b>	<b>Proposed Maximum Aggregate Offering Price<sup>(2)</sup></b>	<b>Amount of Registration Fee</b>
<b>Title of Securities to be Registered</b>	<b>Registered<sup>(1)</sup></b>	<b>Per Share<sup>(2)</sup></b>		
Common Stock, par value \$1.00 per share	3,000,000	\$22.30	\$66,900,000	\$8,329.05

- (1) Pursuant to Rule 416(a), this amount also covers additional securities that may be offered as a result of stock splits, stock dividends or similar transactions.
- (2) Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(c) and 457(h) based upon the average of the high and low prices of the Common Stock as reported on the New York Stock Exchange on May 3, 2018.

**PART I**

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

Documents containing the information specified in Part I of Form S-8 have been and/or will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act ). In accordance with the instructions of Part I of Form S-8, such documents will not be filed with the Securities and Exchange Commission (the Commission ) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute the prospectus as required by Section 10(a) of the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

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

The following documents filed by Forestar Group Inc. (the Company ) are incorporated by reference, as of their respective dates, in this registration statement:

the Annual Report on Form 10-K for the fiscal year ended December 31, 2017, filed on February 28, 2018;

the Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018, filed on May 9, 2018;

the Current Reports on Form 8-K filed with the SEC on January 30, 2018 and February 8, 2018;

the description of the Company's Common Stock contained in its registration statement on Form 8-A/A filed with the Commission on October 5, 2017.

In addition, all documents subsequently filed by the Company pursuant to Section 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, excluding any information furnished under Item 2.02 or Item 7.01 of any Current Report on Form 8-K and corresponding information furnished under Item 9.01 or included as an exhibit, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all such 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 in a document 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 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.**

Thomas B. Montano, who has delivered to the Company a legal opinion regarding the validity of the shares of Common Stock registered pursuant to this registration statement, is the Vice President, Corporate Compliance Officer and Secretary of and is employed and compensated by D.R. Horton, Inc., which owns a majority interest in the Company. Mr. Montano is also the Vice President, Corporate Securities Counsel and Secretary of the Company. Mr. Montano is eligible to receive awards under the Forestar Group Inc. 2018 Stock Incentive Plan (the Plan).

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

The Company's bylaws provide that the Company 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 or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that he or she is or was a director, officer or employee of the Company, or is or was a director, officer or employee of the Company or any direct or indirect wholly owned subsidiary of the Company serving at the request of the Company as a director, officer, employee or agent of any such subsidiary or another corporation, savings and loan association, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding 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 Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct unlawful. The Company has entered into an indemnification agreement with each of its directors and executive officers.

Section 145 of the Delaware General Corporation Law permits a corporation to indemnify its directors and officers against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties, if such directors or officers acted in good faith and in a manner they 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 their conduct was unlawful. In a derivative action, i.e., one by or in the right of the corporation, indemnification may be made only for expenses actually and reasonably incurred by directors and officers in connection with the defense or settlement of an action or suit, and only with respect to a matter as to which they shall have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made if such person shall have been adjudged liable for negligence or misconduct in the performance of his respective duties to the corporation, although the court in which the action or suit was brought may determine upon application that the defendant officers or directors are fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

Section 102(b)(7) of the Delaware General Corporation Law provides that a corporation may eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provisions shall not eliminate or limit the liability of a director (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under section 174 of the Delaware General Corporation Law, or (4) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective.

The Company also has obtained directors' and officers' liability insurance that provides insurance coverage for certain liabilities which may be incurred by directors and officers of the Company.

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

Not applicable.

**Item 8. Exhibits.**

See exhibits listed under the Exhibit Index below.

**Item 9. Undertakings.**

A. 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 this 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 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 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 the undertakings set forth in paragraphs (i) and (ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC 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.

(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. The undersigned registrant hereby undertakes 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 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 this 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 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 of 1933 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 Securities Act of 1933 and will be governed by the final adjudication of such issue.

**EXHIBIT INDEX**

Exhibit No.	Exhibit Description
4.1	<u>Amended and Restated Certificate of Incorporation of Forestar Group Inc. (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed with the Commission on October 10, 2017).</u>
4.2	<u>Amended and Restated Bylaws of Forestar Group Inc. (incorporated by reference to Exhibit 3.2 of the Company's Current Report on Form 8-K filed with the Commission on October 10, 2017).</u>
5.1*	<u>Opinion of Thomas B. Montano, Vice President, Corporate Securities Counsel and Secretary of Forestar Group Inc.</u>
23.1*	<u>Consent of Ernst &amp; Young LLP.</u>
23.2*	<u>Consent of Thomas B. Montano, Vice President, Corporate Securities Counsel and Secretary of Forestar Group Inc. (included in Exhibit 5.1).</u>
24.1*	<u>Power of Attorney (included on signature page hereto).</u>
99.1	<u>Forestar Group Inc. 2018 Stock Incentive Plan (incorporated by reference to Appendix A of the Registrant's Definitive Proxy Statement on Schedule 14A filed on March 29, 2018).</u>

\* Filed herewith.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant, Forestar Group Inc., certifies that it has reasonable grounds to believe that it meets all 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 Arlington, State of Texas, on this 9th day of May, 2018.

**Forestar Group Inc.**

By: /s/ Thomas Montano  
 Name: Thomas Montano  
 Title: Vice President, Corporate Securities  
 Counsel and Secretary

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Thomas Montano, as his or her true and lawful attorney-in-fact and agent, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this registration statement, including post-effective amendments and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto such attorney-in-fact and agent full power and authority to do so 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 or she might or could do in person, hereby ratifying and confirming all that such attorney-in-fact and agent may lawfully do or cause to be done by virtue hereof.

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 dates indicated.

Signature	Title	Date
/s/ Donald J. Tomnitz Donald J. Tomnitz	Executive Chairman of the Board	May 8, 2018
/s/ Daniel C. Bartok Daniel C. Bartok	Chief Executive Officer  <i>(Principal Executive Officer)</i>	May 8, 2018
/s/ Charles D. Jehl Charles D. Jehl	Chief Financial Officer  <i>(Principal Financial Officer and Principal Accounting Officer)</i>	May 8, 2018
/s/ Samuel R. Fuller Samuel R. Fuller	Director	May 8, 2018

/s/ M. Ashton Hudson M. Ashton Hudson	Director	May 8, 2018
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/s/ G.F. (Rick) Ringler, III G.F. (Rick) Ringler, III	Director	May 8, 2018
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/s/ Donald C. Spitzer Donald C. Spitzer	Director	May 8, 2018
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