

HIGHWOODS PROPERTIES INC

FORM 8-K

(Unscheduled Material Events)

Filed 9/18/1997 For Period Ending 9/18/1997

Address	3100 SMOKETREE CT STE 600 RALEIGH, North Carolina 27604
Telephone	919-872-4924
CIK	0000921082
Industry	Real Estate Operations
Sector	Services
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 18, 1997

HIGHWOODS PROPERTIES, INC.

(Exact name of registrant as specified in its charter)

MARYLAND
(State of Incorporation)

1-13100
(Commission File Number)

56-1871668
(IRS Employer Identification No.)

3100 SMOKETREE COURT, SUITE 600
RALEIGH, NORTH CAROLINA
(Address of principal executive offices)

27604
(Zip Code)

(919) 872-4924
(Registrant's telephone number, including area code)

ITEM 5. OTHER EVENT

In September 1997, Highwoods Properties, Inc. (the "Company") retained Alston & Bird, LLP to be its counsel in connection with various matters, including securities matters. In connection therewith and in connection with the Company's Registration Statement on Form S-3, File No. 333-31183 (the "Registration Statement"), (i) attached as Exhibit 5 is the opinion of Alston & Bird LLP as to the legality of the securities registered pursuant to the Registration Statement and (ii) attached as Exhibit 8 is the opinion of Alston & Bird LLP as to certain federal tax matters described in the Registration Statement.

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS

(c) The following exhibits are filed as part of this report:

5 Opinion of Alston & Bird LLP, regarding the legality of the Securities being registered

8 Opinion of Alston & Bird LLP, regarding certain federal tax matters

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

HIGHWOODS PROPERTIES, INC.

/S/ CARMAN J. LIUZZO

Carman J. Liuzzo

*Vice President and Chief Financial
Officer*

Date: September 18, 1997

EXHIBIT 5
ALSTON & BIRD LLP

One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

404-881-7000
Fax: 404-881-4777

September 18, 1997

Highwoods Properties, Inc.
Highwoods/Forsyth Limited Partnership
3100 Smoketree Court, Suite 600
Raleigh, North Carolina 27604

Re: \$1,250,000 Aggregate Offering Price of Securities of Highwoods Properties, Inc. and Highwoods/Forsyth Limited Partnership

Ladies and Gentlemen:

We are acting as counsel for Highwoods Properties, Inc., a Maryland corporation (the "Company"), and Highwoods/Forsyth Limited Partnership, a North Carolina limited partnership (the "Operating Partnership"), in connection with the shelf registration by the Company and the Operating Partnership of \$1,250,000,000 in maximum aggregate offering price of (i) shares of the Company's common stock, par value \$.01 per share (the "Common Stock"), (ii) shares or fractional shares of the Company's preferred stock ("Preferred Stock"), (iii) shares of the Company's Preferred Stock represented by depositary shares ("Depositary Shares"), and (iv) debt securities of the Operating Partnership ("Debt Securities"). The Common Stock, Preferred Stock, Depositary Shares and Debt Securities are the subject of a registration statement (the "Registration Statement") filed by the Company and the Operating Partnership on Form S-3 under the Securities Act of 1933, as amended (the "Act").

In our capacity as your counsel in connection with such registration, we are familiar with the proceedings taken and proposed to be taken by the Company in connection with the authorization and issuance of the Common Stock, Preferred Stock and Depositary Shares, and by the Operating Partnership in connection with the authorization and issuance of the Debt Securities, and for the purposes of this opinion, have assumed such proceedings will be timely completed in the manner presently proposed. In addition, we have made such legal and factual examinations and inquiries, including an examination of originals or copies certified or otherwise identified to our satisfaction of such documents, corporate records and instruments, as we have deemed necessary or appropriate for purposes of this opinion.

Based upon and subject to the foregoing, it is our opinion that:

- (1) The Company has authority pursuant to its Articles of Incorporation to issue the shares of Common Stock to be registered under the Registration Statement and (a) upon the adoption by the Board of Directors of a resolution in form and content required by applicable law, (b) upon compliance with the applicable provisions of the Act and such state "blue sky" or securities laws as may be applicable and (c) upon issuance and delivery of and payment for such shares in the manner contemplated by the Registration Statement and/or the applicable prospectus supplement, such shares of Common Stock will be legally issued, fully paid and nonassessable.
- (2) The Company has authority pursuant to its Articles of Incorporation to issue the shares of Preferred Stock to be registered under the Registration Statement and (a) upon the adoption by the Board of Directors of a resolution in form and content required by applicable law, (b) upon compliance with the applicable provisions of the Act and such state "blue sky" or securities laws as may be applicable, (c) upon the adoption by the Company's Board of Directors and the due execution and filing by the Company with the Maryland State Department of Assessments and Taxation the Articles Supplementary establishing the preferences, limitations and relative voting and other rights of each series of Preferred Stock prior to issuance thereof and (d) upon issuance and delivery of and payment for such shares in the manner contemplated by the Registration Statement and/or the applicable prospectus supplement, such shares of Preferred Stock will be legally issued, fully paid and nonassessable.
- (3) The Company has authority pursuant to its Articles of Incorporation to issue Depositary Shares to be registered under the Registration Statement and when (a) a deposit agreement substantially as described in the Registration

Statement has been duly executed and delivered by the Company and a depositary,

(b) the depositary receipts representing the Depositary Shares in the form contemplated and authorized by such deposit agreement have been duly executed and delivered by such depositary and delivered to and paid for by the purchasers thereof in the manner contemplated by the Registration Statement and/or the applicable prospectus supplement and (c) all corporate action necessary for the issuance of such Depositary Shares and the underlying Preferred Stock has been taken (including but not limited to action establishing the preferences, limitations and relative voting and other rights of such Preferred Stock prior to issuance thereof), such Depositary Shares will be legally issued and will entitle the holders thereof to the rights specified in the deposit agreement relating to such Depositary Shares.

(4) The Operating Partnership has authority to issue the Debt Securities to be registered under the Registration Statement and when (a) the applicable provisions of the Act and such state "blue sky" or securities laws as may be applicable have been complied with and (b) the Debt Securities have been issued and delivered for value as contemplated in the Registration Statement, such Debt Securities will be legally issued and will be binding obligations of the Operating Partnership and the Company, respectively.

To the extent that the obligations of the Company under the deposit agreement or the obligations of the Company as guarantor and the Operating Partnership as obligor under an indenture may be dependent upon such matters, we have assumed for purposes of this opinion (i) that the applicable depositary or trustee, as the case may be, is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to engage in the activities contemplated by the applicable deposit agreement or indenture as the case may be, (ii) that such deposit agreement or indenture, as the case may be, has been duly authorized, executed and delivered by and constitutes the legal, valid and binding obligation of such depositary or trustee, as the case may be, enforceable in accordance with its respective terms, (iii) that such depositary or trustee, as the case may be, is in compliance, generally and with respect to acting as a depositary or trustee, respectively, under the applicable deposit agreement or indenture, with all applicable laws and regulations and (iv) that such depositary or trustee has the requisite organizational and legal power and authority to perform its obligations under the applicable deposit agreement or indenture, as the case may be.

The opinions set forth above are subject to the following exceptions, limitations and qualifications: (i) the effect of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors; (ii) the effect of general principles of equity, whether enforcement is considered in a proceeding in equity or law, in the discretion of the court before which any proceeding therefor may be brought; (iii) the unenforceability under certain circumstances under law or court decisions of provisions providing for the indemnification of or contribution to a party with respect to a liability where such indemnification or contribution is contrary to public policy; (iv) we express no opinion concerning the enforceability of the waiver of rights or defenses contained in Section 514 of the Indenture; and (v) we express no opinion with respect to whether acceleration of Debt Securities may affect the collectibility of any portion of the stated principal amount thereof which might be determined to constitute unearned interest thereon.

We consent to your filing this opinion as an exhibit to the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the prospectus included therein.

Very truly yours,

ALSTON & BIRD LLP

By: /s/ Brad S. Markoff

Brad S. Markoff

EXHIBIT 8

ALSTON & BIRD LLP

One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

404-881-7000
Fax: 404-881-4777

September 18, 1997

Highwoods Properties, Inc.
3100 Smoketree Court
Suite 600
Raleigh, North Carolina 27604

Re: \$1,250,000 Aggregate Offering Price of Securities (the "Securities") of Highwoods Properties, Inc. (the "Company") and Highwoods/Forsyth Limited Partnership

Ladies and Gentlemen:

In connection with a registration statement on Form S-3, File No. 333-31183 (the "Registration Statement"), you have asked us to render an opinion with respect to the qualification of the Company as a real estate investment trust ("REIT") under Sections 856 - 860 of the Internal Revenue Code of 1986, as amended, (the "Code").

This opinion is based solely on various assumptions and facts as set forth in the Registration Statement and is conditioned upon certain representations made by the Company as to factual matters through a certificate of an officer of the Company (the "Officer's Certificate") attached hereto and made a part hereof. We have made no independent inquiry as to the factual matters set forth therein.

In addition to the foregoing, we have examined originals or copies certified or otherwise identified to our satisfaction of (i) the Registration Statement; (ii) Company's Form 10-K reports for the years 1994 through 1996; (iii) the Company's Annual Reports to Stockholders for the years 1994 through 1996; (iv) the Company's Articles of Incorporation; (v) the Company's Bylaws; and (vi) the Partnership Agreement for Highwoods/Forsyth Limited Partnership. We have examined no other documents and our opinion is limited to matters determined through an examination of such documents and the factual matters set forth in the Officer's Certificate. We, however, have received the attached letter from Ernst & Young, L.L.P. ("Ernst & Young"), and we have discussed the matters contained therein with Ernst & Young and they have verified to us that they are aware of no matter that would make the opinion provided below inaccurate or

1211 East Morehead Street
P.O. Drawer 34009
Charlotte, NC 28234-4009
704-331-6000
Fax: 704-334-2014

3605 Glenwood Avenue
P.O. Drawer 31107
Raleigh, NC 27622-1107
919-420-2200
Fax: 919-881-3175

601 Pennsylvania Avenue, N.W.
North Building, Suite 250
Washington, DC 20004-2601
202-508-3300
Fax: 202-508-3333

incomplete. The representations made in such letter also serve as a basis for our opinions expressed herein.

In rendering the opinions set forth herein, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures thereon, the legal capacity of natural persons executing such documents, and the conformity of authentic original documents of all documents submitted to us as copies.

We are opining herein as to the effect on the subject transaction only of the federal income tax laws of the United States and we express no opinion with respect to the applicability thereto, or the affect thereon, of other federal laws, the laws of any other jurisdiction, the laws of any state or as to any matter of municipal law or the laws of any other local agencies within any state.

Based solely on the facts in the Registration Statement and the Officer's Certificate, we are of the opinion that the Company has been organized and has operated in conformity with the requirements for qualification and taxation as a REIT under the Code for its taxable years ended December 31, 1994 through 1996 and that the Company is in a position to continue its qualification as a REIT within the definition of Section 856(a) of the Code for the taxable year that will end December 31, 1997. With respect to 1997, we note that the Company's status as a REIT at any time during such year is dependent, among other things, upon the Company meeting the requirements of Sections 856 through 860 of the Code throughout the year and for the year as a whole. Accordingly, because the Company's satisfaction of such requirements will depend upon future events, it is not possible to assure that the Company will satisfy the requirements to be a REIT during such year.

In addition, we have participated in the preparation of the material under the heading "Federal Income Tax Consideration" of the Registration Statement and we are of the opinion that the federal income tax treatment described therein is accurate in all material respects.

This opinion is based on various statutory provisions, regulations promulgated thereunder and interpretations thereof by the Internal Revenue Service and the courts having jurisdiction over such matters, all of which are subject to change either prospectively or retroactively. Also, any variation or difference in the facts from those set forth in the Registration Statement or the Officer's Certificate may affect the opinions stated herein.

This opinion is furnished only to you, is solely for your use in connection with the Registration Statement, and is limited to the specific matters covered hereby and should

not be interpreted to imply that the undersigned has offered its opinion on any other matter. This opinion may be relied upon only by the parties to whom it is addressed and may not be quoted, circulated, or used for any other purpose without our prior written consent. We, however, hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Registration Statement.

Very truly yours,

ALSTON & BIRD, L.L.P.

By: /s/ Pinney L. Allen

Pinney L. Allen

PLA: mmh
Attachments
[AD972600.114]

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