

ASSOCIATED ESTATES REALTY CORP
Form DEF 14A
March 28, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934

Filed by the Registrant **p**
Filed by a Party other than the Registrant **o**
Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
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ASSOCIATED ESTATES REALTY CORPORATION
(Name of Registrant as Specified In Its Charter)
(Name of Person(s) Filing Proxy Statement if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- p** No fee required.
 - o** Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 - (1) Title of each class of securities to which transaction applies:
 - (2) Aggregate number of securities to which transaction applies:
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 - (4) Proposed maximum aggregate value of transaction:
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 - o** Fee paid previously with preliminary materials.
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 - (3) Filing Party:
 - (4) Date Filed:
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ASSOCIATED ESTATES REALTY CORPORATION

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

To our Shareholders:

The 2008 annual meeting of shareholders of Associated Estates Realty Corporation will be held at The Forum, One Cleveland Center, 1375 E. Ninth St., Cleveland, Ohio 44114, on Wednesday, May 7, 2008, at 10:00 a.m., local time, for the following purposes:

1. To elect seven directors, each to hold office for a one-year term and until his successor has been duly elected and qualified;
2. To vote on a proposal to approve the Associated Estates Realty Corporation 2008 Equity-Based Award Plan;
3. To ratify the appointment of PricewaterhouseCoopers LLP as the Company's independent accountants for the Company's fiscal year ending December 31, 2008; and
4. To transact all other business that properly comes before the meeting.

Only shareholders of record at the close of business on March 17, 2008, are entitled to receive notice of and to vote at the meeting or any adjournment thereof. Shareholders are urged to complete, date and sign the enclosed proxy card and return it in the enclosed envelope. The principal address of Associated Estates Realty Corporation is 1 AEC Parkway, Richmond Heights, Ohio 44143.

By order of the Board of Directors,

Martin A. Fishman
Secretary

Dated: March 28, 2008

YOUR VOTE IS IMPORTANT. PLEASE SIGN, DATE AND RETURN YOUR PROXY CARD.

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE SHAREHOLDER MEETING
TO BE HELD ON MAY 7, 2008**

The Proxy Statement, Annual Report to Shareholders and Proxy Card are available at www.aecrealty.com.

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ASSOCIATED ESTATES REALTY CORPORATION
1 AEC Parkway
Richmond Heights, Ohio 44143

PROXY STATEMENT

Our Board of Directors is sending you this proxy statement to ask for your vote as a shareholder of Associated Estates Realty Corporation (the Company) on certain matters to be voted on at the upcoming annual meeting of shareholders, which will be held at The Forum, One Cleveland Center, 1375 E. Ninth St., Cleveland, Ohio 44114, on Wednesday, May 7, 2008, at 10:00 a.m., local time. We are mailing this proxy statement and the accompanying notice and proxy, along with our Annual Report to Shareholders, on or about March 28, 2008.

ABOUT THE MEETING

What Is the Purpose of the Annual Meeting of Shareholders?

At the Company's annual meeting of shareholders, shareholders will vote upon matters outlined in the accompanying notice of meeting, including the election of seven directors, a proposal to approve the Associated Estates Realty Corporation 2008 Equity-Based Award Plan and a proposal to ratify the appointment of PricewaterhouseCoopers LLP as the Company's independent accountants for the Company's fiscal year ending December 31, 2008. We are not aware of any other matter that will be presented for your vote at the meeting.

Who Is Entitled to Vote?

Only shareholders of record at the close of business on the record date, March 17, 2008, are entitled to receive notice of and to vote the common shares that they held on the record date at the meeting, or any postponement or adjournment of the meeting. Each outstanding common share entitles such shareholders to cast one vote on each matter to be voted on. As of the record date, the Company had outstanding 16,380,465 common shares.

Who Can Attend the Meeting?

Only shareholders as of the record date, or their duly appointed proxies, may attend the meeting. Please note that if you hold your shares in street name (that is, through a broker or other nominee), your name does not appear in the Company's records and you will need to bring a copy of your brokerage statement reflecting your ownership of common shares as of the record date.

When and Where Is the Meeting?

The meeting will be held at The Forum, One Cleveland Center, 1375 E. Ninth St., Cleveland, Ohio 44114, on Wednesday, May 7, 2008, at 10:00 a.m., local time. Parking is available at One Cleveland Center. You can enter the parking garage from either St. Clair Ave. or Rockwell Ave. There will be a fee of approximately \$10.00 charged for parking in that garage. If that garage is full, there are other parking facilities within walking distance of One Cleveland Center.

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What Constitutes a Quorum?

A quorum for the transaction of business at the meeting requires the presence, either in person or by proxy, of the holders of a majority of the common shares outstanding on the record date. Proxies received by the Company but marked as abstentions or broker non-votes will be included in the calculation of the number of shares considered to be present at the meeting for purposes of establishing a quorum.

What Vote Is Required to Approve each Proposal Assuming that a Quorum Is Present at the Annual Meeting of Shareholders?

Proposal One: Election of Directors. The seven director nominees who receive the greatest number of affirmative votes will be elected directors. Abstentions and broker non-votes will not count for or against any nominee for director.

Proposal Two: Approval of the 2008 Associated Estates Realty Corporation Equity-Based Award Plan. The affirmative vote of a majority of the votes cast is required for the approval of the Associated Estates Realty Corporation 2008 Equity-Based Award Plan. If you abstain from voting on this proposal, it will have the same effect as a vote against this proposal. Broker non-votes will not be treated as voting on the proposal and, therefore, will not count for or against this proposal.

Proposal Three: Ratification of the Appointment of PricewaterhouseCoopers LLP as the Company's Independent Accountants. The Audit Committee plans to reappoint PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm to audit our financial statements for calendar year 2008. Although ratification is not required, the Board of Directors is submitting this appointment to our shareholders for ratification as a matter of good corporate practice. See page 32 under Proposal Three for additional information. A majority of the votes cast is required for the approval of this proposal. If you abstain from voting on this proposal, it will have the same effect as a vote against this proposal.

How Do I Vote?

You may cast your vote in person at the meeting or by any one of the following ways:

By Telephone: You may call the toll-free number printed on your proxy card. Follow the simple instructions and use the personalized control number printed on your proxy card to vote your shares. You will be able to confirm that your vote has been properly recorded. Telephone voting is available 24 hours a day. If you vote by telephone, you do not need to return your proxy card.

Over the Internet: You may visit the website printed on your proxy card. Follow the simple instructions and use the personalized control number printed on your proxy card to vote your shares. You will be able to confirm that your vote has been properly recorded. Internet voting is available 24 hours a day. If you vote over the Internet, you do not need to return your proxy card.

By Mail: You may mark, sign and date the enclosed proxy card and return it in the enclosed postage-paid envelope.

By Broker: If you own shares beneficially through a bank, broker or otherwise, the institution that holds your shares will enclose telephone and Internet voting instructions when sending our proxy statement to you, if these voting methods are available through the institution.

Each proxy that is received timely, properly signed and not subsequently revoked, will be voted at the meeting in accordance with the directions of the shareholder. If a proxy is properly signed but incomplete or if you do not provide instructions, the proxy will be voted: 1) **FOR** the election of each nominee to serve as a director of the Company; 2) **FOR** the approval of the 2008 Associated Estates Realty Corporation Equity-Based Award Plan; 3) **FOR** the ratification of the appointment of the Company's independent accountants; and 4) pursuant to the discretion of the appointed proxies for any other action properly brought before the meeting.

Can I Revoke My Proxy?

You may revoke or change your vote at any time before your proxy has been exercised by filing a written notice of revocation or a duly executed proxy bearing a later date with the Company at the Company's principal address indicated on the attached Notice of Annual Meeting of Shareholders, or by giving notice of revocation to the Company in open meeting. However, your presence at the annual meeting of shareholders alone will not be sufficient to revoke your previously granted proxy.

How Will the Proxy Solicitation Be Conducted?

This solicitation of proxies is made by and on behalf of the Board of Directors. The cost of the solicitation of your proxy will be borne by the Company. In addition to solicitation of proxies by mail and electronically, officers and regular employees of the Company may solicit proxies in person, by telephone or facsimile. These officers and employees will not receive any additional compensation for their participation in the solicitation. The Company has retained Georgeson Shareholder Communications, Inc. at an estimated cost of \$8,000 plus reimbursement of expenses, to assist in the solicitation of proxies from brokers, nominees, institutions and individuals.

PROPOSAL ONE: ELECTION OF DIRECTORS

At the annual meeting of shareholders, unless you specify otherwise, the common shares represented by your proxy will be voted to re-elect Messrs. Adams, Delaney, Friedman, Gibbons, Milstein, Schoff and Schwarz. Each director elected will serve until the next annual meeting of shareholders and until his successor is elected and qualified.

If for any reason any of the nominees is not a candidate at the time of the election (which is not expected), the common shares represented by your proxy will be voted for the election of a substitute nominee designated by the Board of Directors as recommended by the Nominating and Corporate Governance Committee.

The following table contains information with respect to each nominee:

Nominees for Election at the Annual Meeting of Shareholders

Name	Age	Principal Occupation	Director Since
Albert T. Adams	57	Partner, Baker & Hostetler LLP	1996
James M. Delaney	73	Consultant, AON Risk Services	1999
Jeffrey I. Friedman	56	Chairman of the Board, President and Chief Executive Officer of the Company	1993
Michael E. Gibbons	55	Senior Managing Director and Principal, Brown Gibbons Lang & Company L.P.	2004
Mark L. Milstein	45	Project Manager, J. Holden Construction	1993
James A. Schoff	62	Special Advisor to the CEO of Developers Diversified Realty Corporation	2006
Richard T. Schwarz	56	Limited Partner, Edgewater Capital Partners	1994

Business Experience of Directors

Albert T. Adams has been a partner of the law firm of Baker & Hostetler LLP in Cleveland, Ohio, since 1984, and has been associated with the firm since 1977.

James M. Delaney has served as a consultant to AON Risk Services, a risk management firm, since 1997. Mr. Delaney served as office managing partner of Deloitte & Touche, Cleveland, Ohio, from 1989 until his retirement in June 1997, having joined its predecessor firm in 1958.

Jeffrey I. Friedman has been Chairman of the Board and Chief Executive Officer of the Company since its organization in July 1993, and served as the Company's President from the Company's organization to February 2000 and again since December 2002. In 1974, Mr. Friedman joined the Company's predecessor, Associated Estates Corporation, an owner and manager of multifamily residential apartment communities. Mr. Friedman is the brother-in-law of Mark L. Milstein.

Michael E. Gibbons has been the Senior Managing Director and Principal of Brown Gibbons Lang & Company L.P., a Cleveland-based investment banking firm, since its inception in 1989. Mr. Gibbons also currently serves on the Board of Directors of Preformed Line Products, an international designer and manufacturer of overhead and underground network products and systems.

Mark L. Milstein has been a project manager for J. Holden Construction, a construction company, since 1999. Mr. Milstein was President of Adam Construction Company, a general contractor, from 1993 to 1999 and a Senior Project Manager for Adam Construction Company from 1988 to 1993. Mr. Milstein is the brother-in-law of Jeffrey I. Friedman.

James A. Schoff has served as special advisor to the CEO of Developers Diversified Realty Corporation (DDR), a shopping center real estate investment trust, since 2004. Mr. Schoff also served as Executive Vice President and Chief Operating Officer of DDR from 1993 to 1998, Vice Chairman and Chief Investment Officer of DDR from 1998 to 2002, and Senior Investment Officer of DDR from 2002 to 2003.

Richard T. Schwarz has been a limited partner of Edgewater Capital Partners, a private equity investment firm, and a member of its board of operating advisors since July 2003. In 1998, he co-founded Sycamore Partners LLC, a Cleveland-based investment and advisory firm focused on investing in businesses in northeast Ohio. Prior to forming Sycamore, he was Director and President of Laurel Industries, Inc., a privately held chemical manufacturer and a subsidiary of Occidental Petroleum Corporation. Mr. Schwarz is currently Chairman of the Board of Directors of Nine Sigma Inc., a privately held technology company.

How Often Did the Board of Directors Meet During 2007?

The Board of Directors held five meetings in 2007. In 2007, each member of the Board of Directors attended at least 75% of the meetings of the Board of Directors and the committees of which he was a member. The Company has a policy requiring director attendance at all Board of Directors meetings, absent unusual circumstances. The Company expects its directors to attend the annual meeting of shareholders (which is usually held the same day as a meeting of the Board of Directors). All of the Company's directors serving at the time attended the 2007 annual meeting of shareholders.

How Are Directors Compensated?

Employees of the Company who are also directors are not paid any director fees. In 2007, compensation for non-employee directors included the following:

An annual retainer fee of \$35,000, paid in quarterly installments;
 An additional annual retainer fee of \$5,000, paid in quarterly installments, to the respective Chairs of the Executive Compensation, Finance and Planning and Nominating and Corporate Governance Committees;
 An additional annual retainer fee of \$7,500, paid in quarterly installments, to the Chair of the Audit Committee;
 An additional annual retainer of \$2,500, paid in quarterly installments, to the lead director;
 Reimbursement of expenses related to attending Board of Directors and committee meetings; and
 A grant of 3,000 restricted shares issued on May 2, 2007. The closing price of the Company's stock on the date of that grant was \$15.05.

Non-employee directors are eligible for restricted share grants and stock option grants, which may be awarded from time to time by the Board of Directors. The Company maintains a non-qualified deferred compensation plan for directors (the Directors' Deferred Compensation Plan). Each non-employee director has the opportunity to elect to defer fees earned in cash and/or equity awards into an account. The amount of fees and equity awards are converted to share units. These units are valued based on the Company's share price and accrue dividend equivalents. Distributions from each participant's account are made in cash based on the instructions set forth by the participant at the time he elects to defer his compensation. Because the value of a director's account balance is determined by reference to the Company's share price and because dividend equivalents received are equal to the dividend declared on the Company's common shares, there are no above-market earnings on deferred compensation account balances.

The following table sets forth the compensation paid to the Company's non-employee directors during 2007:

DIRECTOR COMPENSATION

Name	Fees Earned or Paid in Cash (\$)(1)	Stock Awards (\$)(2)	Change in Pension Value and Non-Qualified Deferred Compensation Earnings (\$)(3)	Total (\$)
Albert T. Adams	40,000	-	-	40,000
James M. Delaney	42,500	-	-	42,500
Michael E. Gibbons	40,000	13,949	22,281	76,230
Mark L. Milstein	35,000	36,063	-	71,063
James A. Schoff	35,000	11,491	31,696	78,188
Richard T. Schwarz	42,500	11,633	-	54,133

- (1) Messrs. Adams, Gibbons and Schoff have elected to defer the fees earned in cash into the Directors' Deferred Compensation Plan.
- (2) A grant of 3,000 restricted shares was issued to each non-employee director on May 2, 2007, and the closing price of the Company's stock on that date was \$15.05. The amounts reflect dollar amounts recognized for financial statement reporting purposes for the fiscal year ended December 31, 2007, in accordance with FAS 123(R) and include restricted shares granted and deferred share units accrued during and prior to 2007. Assumptions used in the calculation of these amounts are included in Note 17 of the Notes to the Consolidated Financial Statements included in the Company's Annual Report on Form 10-K, for the year ended December 31, 2007, filed with the SEC on February 27, 2008. Messrs. Adams, Delaney, Gibbons, Schoff, and Schwarz elected to defer their restricted share award into the Directors' Deferred Compensation Plan.
- (3) The amounts reflect the change in fair value of deferral accounts under the Directors' Deferred Compensation Plan. Amounts credited to deferral accounts are converted to share units which are valued based upon the closing price of the Company's common shares at the end of each reporting period. Each deferral account is increased when the Company pays a dividend on the Company's common shares by the number of share units that represent the dividend paid per share multiplied by the number of share units in the account on the date of record for the related dividend payment. At the end of each reporting period, the total value of the deferred compensation is adjusted for increases in share units and for changes in our common share price. The accounts of Messrs. Adams, Delaney and Schwarz had a decrease in total value \$172,436, \$80,681, and \$19,590, respectively, due to the decrease of \$4.30 in the Company's share price in 2007. Mr. Milstein had no compensation deferred under this plan as of December 31, 2007.

The Company has adopted share ownership guidelines for members of the Board of Directors. The guidelines provide that each director own Company common shares or common share equivalents having a value at least equal to such director's annual retainer (including committee retainers) and that once that level is achieved such guidelines shall be deemed to have been satisfied without regard to any fluctuation in value in the Company's common shares. All of the members of the Board of Directors have met this ownership guideline.

The Board of Directors recommends that shareholders vote FOR the nominees for election set forth above.

**PROPOSAL TWO: TO APPROVE THE ASSOCIATED ESTATES
REALTY CORPORATION 2008 EQUITY-BASED AWARD PLAN**

General

The Associated Estates Realty Corporation 2008 Equity-Based Award Plan (the "2008 Equity-Based Award Plan") was adopted by the Company's Board of Directors on March 14, 2008, subject to approval by the Company's shareholders. The description herein is a summary of the 2008 Equity-Based Award Plan and is subject to and qualified by the complete text of the 2008 Equity-Based Award Plan, which is included as Appendix I.

Shareholder approval is being sought in order that (i) the shares reserved for issuance under the 2008 Equity-Based Award Plan may be listed on the New York Stock Exchange ("NYSE") pursuant to the rules of the exchange, (ii) the Company may grant options that qualify as incentive stock options under the Internal Revenue Code of 1986, as amended (the "Code"), and (iii) compensation attributable to equity-based awards will qualify as performance-based compensation, which would exempt such grants from the limits on the deductibility contained in the Omnibus Budget Reconciliation Act of 1993 (the "Act") for federal income tax purposes of certain corporate payments to executive officers.

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Under the 2008 Equity-Based Award plan, 750,000 common shares are available for awards. The 2008 Equity-Based Award Plan is being submitted to the Company's shareholders, in part, pursuant to the requirements of the Act. The Act amended the Code to limit to \$1 million per year the deduction allowed for federal income tax purposes for compensation paid to the Chief Executive Officer and the four other most highly compensated executive officers of a public company (the Deduction Limit). The Deduction Limit, which was effective beginning in 1994, applies to compensation that does not qualify for any of the limited number of exceptions provided for in the Act (the Non-Qualified Compensation). Under the Act, the Deduction Limit does not apply to compensation paid under a plan that meets certain requirements for performance-based compensation. Compensation attributable to a stock option is deemed to satisfy the requirement that compensation be paid on account of the attainment of one or more performance goals, if (i) the grant is made by a committee of directors, which meets certain criteria, (ii) the plan under which the option is granted states a maximum number of options that may be granted to any individual during a specified period of time, and (iii) the amount of compensation the individual could receive is based solely on the increase in the value of the common shares after the date of grant. It is the Company's intent to structure the 2008 Equity-Based Award Plan to satisfy the requirements for the performance-based compensation exception to the Deduction Limit and, thus, to preserve the full deductibility of all compensation paid thereunder to the extent practicable. As a consequence, the Board of Directors has directed that the 2008 Equity-Based Award Plan, as it applies to participants, be submitted to the Company's shareholders for approval in accordance with the requirements for the performance-based compensation exception to the Deduction Limit.

The 2008 Equity-Based Award Plan provides for the grant to officers, other employees and directors of the Company, its subsidiaries and affiliates, of options to purchase common shares of the Company (the Stock Options), rights to receive the appreciation in value of common shares (the Share Appreciation Rights), awards of common shares subject to vesting and restrictions on transfer (the Restricted Shares), awards of common shares issuable in the future upon satisfaction of certain conditions (the Deferred Shares) and other awards based on common shares (the Other Share-Based Awards). Stock Options, Share Appreciation Rights, Restricted Shares, Deferred Shares and Other Share-Based Awards are collectively referred to as Awards.

Under the terms of the Company's 2001 Amended and Restated Equity Incentive Plan, 1,500,000 common shares were available for Awards at the inception of this plan. In May of 2005, the Company sought and obtained shareholder approval of the 2001 Amended and Restated Equity Incentive Plan which included the authorization to increase the number of common shares available for Awards by 750,000 common shares. The aggregate number of common shares subject to past and future awards under the approved plan was 2,250,000. As of March 17, 2008, awards covering 1,887,319 common shares had been granted and remained unexercised under all of the Company's equity incentive plans and 471,185 common shares were available for future awards. The structure of the 2008 long-term incentive program for the named executives and the 2008 long-term incentive program for other employees was implemented in February of 2008. If the objectives set forth under these long-term incentive programs are achieved at target levels, and if the non-employee directors receive a restricted share grant as a portion of their compensation, consistent with past practices, the Company projects granting 136,019 shares by February of 2009, assuming a stock price of \$10.58. This would result in 335,166 shares remaining for future grants under the 2001 Amended and Restated Equity Incentive Plan. If the 2008 Equity-Based Award Plan is not approved by the shareholders, then any common shares that were allocated to the 2001 Amended and Restated Equity Incentive Plan, as approved, will remain reserved for issuance under that plan.

Under the 2001 Equity Incentive Plan and the proposed 2008 Equity-Based Award Plan, no participant may receive Stock Options or Share Appreciation Rights with respect to more than 125,000 common shares during any calendar year (the Individual Limit), subject to adjustment as described below. In addition, in connection with the commencement of employment, a participant may be granted Stock Options or Share Appreciation Rights with respect to no more than 100,000 common shares, which will not count against the Individual Limit.

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The following table sets forth certain information regarding the Company's equity compensation plans as of December 31, 2007:

Number of	Number of Securities Remaining
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