
Section 1: S-8 (FORM S-8)

As filed with the Securities and Exchange Commission on May 9, 2019

Registration Statement No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

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

 **Invesco Mortgage Capital Inc.**

(Exact Name of Registrant as Specified in its Charter)

Maryland
(State or Other Jurisdiction
of Incorporation)

26-2749336
(IRS Employer
Identification No.)

1555 Peachtree Street, NE, Atlanta, Georgia
(Address of Principal Executive Offices)

30309
(Zip Code)

Invesco Mortgage Capital Inc. 2009 Equity Incentive Plan as Amended and Restated
(Full title of the Plan)

Rebecca S. Smith, Esq.
1555 Peachtree Street, N.E., Suite 1800
Atlanta, Georgia 30309
(name and address of agent for service)

(404) 479-2826
(Telephone number, including area code, of agent for service)

Copy to:

Michael Hepburn, Esq.
Eversheds Sutherland (US) LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20001
Telephone: (202) 383-0100
Facsimile: (202) 637-3593

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

Non-accelerated filer

Accelerated filer

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

| Title of securities being registered | Amount being registered (1) | Proposed maximum offering price per share (2) | Proposed maximum aggregate offering price (2) | Amount of registration fee |
|---|------------------------------------|--|--|-----------------------------------|
| Common Stock, par value \$0.01 per share | 200,000 | \$16.17 | \$3,234,000 | \$391.96 |

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers an indeterminate number of shares of common stock, par value \$0.01 per share (the "Common Stock"), of Invesco Mortgage Capital Inc. (the "Registrant") that may be issued pursuant to stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of determining the amount of the registration fee pursuant to Rule 457(c) and 457(h) under the Securities Act, based upon the average of the high and low sales prices of the Registrant's Common Stock as reported on the New York Stock Exchange on May 6, 2019.
-
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PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information required in Part I of Form S-8 will be sent or given to participants in the 2009 Equity Incentive Plan as Amended and Restated of Invesco Mortgage Capital Inc. (the "Company") as specified by Rule 428(b)(1) under the Securities Act, as amended (the "Securities Act"). In accordance with Rule 428 and the instructions of Part I of Form S-8, such documents are not being filed with the Securities and Exchange Commission (the "SEC") 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 into this registration statement on Form S-8 (this "Registration Statement") pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10 (a) of the Securities Act. Requests for information should be directed to Invesco Mortgage Capital Inc., 1555 Peachtree Street, N.E., Suite 1800, Atlanta, Georgia 30309, Attn: Corporate Secretary.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, filed by the Company with the SEC, are hereby incorporated by reference herein and made a part hereof:

- (a) the Company's Prospectus, filed with the SEC on [March 19, 2019](#), pursuant to Rule 424(b) under the Securities Act;
- (b) the Company's Annual Report on [Form 10-K](#) for the year ended December 31, 2018, filed with the SEC on February 20, 2019;
- (c) the Company's Quarterly Report on [Form 10-Q](#) for the quarter ended March 31, 2019, filed with the SEC on May 8, 2019;
- (d) the Company's Current Reports on Form 8-K, filed with the SEC on [February 4, 2019](#) (Item 8.01 only), [February 7, 2019](#), [February 15, 2019](#), [March 19, 2019\(1\)](#), [March 19, 2019\(2\)](#) and [May 7, 2019](#); and
- (e) the description of the Company's common stock contained in the Company's [Form 8-A](#) filed with the SEC on June 18, 2009.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all 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.

In no event, however, will any information that the Company discloses under Item 2.02 or 7.01 of any Current Report on Form 8-K that the Company may from time to time furnish to the SEC, or any other information that is not deemed "filed" with the SEC, be incorporated by reference into, or otherwise become part of, this registration statement.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that such statement is modified or superseded by a subsequently filed document which also is or is deemed to be incorporated by reference herein. Any such statement so modified or superseded shall not be deemed to constitute a part of this registration statement except as so modified or superseded.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment as being material to the cause of action. The Company's charter contains such a provision that eliminates such liability to the maximum extent permitted by Maryland law.

The MGCL requires the Company (unless the Company's charter provides otherwise, which the Company's charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, under the MGCL, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses.

In addition, the MGCL permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and
- a written undertaking by the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

The Company's charter authorizes the Company to obligate itself and the Company's bylaws obligate the Company, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of the final disposition of a proceeding to:

- any present or former director or officer who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity; or

- any individual who, while a director or officer of the Company and at the Company's request, serves or has served another corporation, REIT, partnership, joint venture, trust, employee benefit plan, limited liability company or any other enterprise as a director, officer, partner or trustee of such corporation, REIT, partnership, joint venture, trust, employee benefit plan, limited liability company or other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity.

The Company's charter and bylaws also permit the Company to indemnify and advance expenses to any person who served a predecessor of the Company in any of the capacities described above and to any employee or agent of the Company or a predecessor of the Company.

Insofar as the foregoing provisions permit indemnification of directors, officers or persons controlling the Company for liability arising under the Securities Act, the Company has been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit Number | Description |
|----------------|--|
| 4.1 | <u>Articles of Amendment and Restatement of the Company (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q, filed with the SEC on August 12, 2009)</u> |
| 4.2 | <u>Amended and Restated Bylaws of the Company (incorporated herein by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed with the SEC on February 17, 2017 (File No. 814-00735))</u> |
| 4.3 | <u>Invesco Mortgage Capital Inc. 2009 Equity Incentive Plan as Amended and Restated (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the SEC on May 7, 2019)</u> |
| 5.1 | <u>Opinion of Eversheds Sutherland (US) LLP as to the validity of the shares of the Company's common stock being registered (including consent)*</u> |
| 23.1 | <u>Consent of Eversheds Sutherland (US) LLP (included in Exhibit 5.1)*</u> |
| 23.2 | <u>Consent of PricewaterhouseCoopers LLP*</u> |
| 24.1 | Power of Attorney (included on signature page)* |

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned Company 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;

(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 thereof) 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 a prospectus filed with the SEC 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) 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 Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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 Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report 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) Insofar as indemnification for liabilities arising under the Securities Act 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 SEC 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 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 and will be governed by the final adjudication of such issue.

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 on Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on this 9th day of May, 2019.

INVESCO MORTGAGE CAPITAL INC.

By: /s/ John M. Anzalone

Name: John M. Anzalone

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints John M. Anzalone and R. Lee Phegley, Jr., and each of them (with full power to each of them to act alone), as his/her true and lawful attorneys-in-fact and agents, with full power of substitution and re-substitution, for him/her and on his/her behalf and in his/her name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act of 1933, as amended, and any or all amendments (including, without limitation, post-effective amendments) to this registration statement, with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any other regulatory authority, granting unto such attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing appropriate or necessary to be done in order to effectuate the same, as fully to all intents and purposes as he himself or she herself might or could do in person, hereby ratifying and confirming all that such attorneys-in-fact and agents, or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated:

| | <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|-----|---|--|-------------|
| By: | <u>/s/ John M. Anzalone</u> John M. Anzalone | Chief Executive Officer (Principal Executive Officer) | May 9, 2019 |
| By: | <u>/s/ R. Lee Phegley, Jr.</u> R. Lee Phegley, Jr. | Chief Financial Officer (Principal Financial Officer) | May 9, 2019 |
| By: | <u>/s/ Roseann M. Perlis</u> Roseann M. Perlis | Chief Accounting Officer (Principal Accounting Officer) | May 9, 2019 |
| By: | <u>/s/ John S. Day</u> John S. Day | Director | May 9, 2019 |
| By: | <u>/s/ Carolyn B. Handlon</u> Carolyn B. Handlon | Director | May 9, 2019 |
| By: | <u>/s/ Edward J. Hardin</u> Edward J. Hardin | Director | May 9, 2019 |

| | | | |
|-----|---|----------|-------------|
| By: | <u>/s/ James R. Lientz, Jr.</u> James R. Lientz, Jr. | Director | May 9, 2019 |
| By: | <u>/s/ Dennis P. Lockhart</u> Dennis P. Lockhart | Director | May 9, 2019 |
| By: | <u>/s/ Gregory G. McGreevey</u> Gregory G. McGreevey | Director | May 9, 2019 |
| By: | <u>/s/ Colin D. Meadows</u> Colin D. Meadows | Director | May 9, 2019 |

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Section 2: EX-5.1 (EX-5.1)

EVERSHEDS
SUTHERLAND

Eversheds Sutherland (US) LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20001-3980

Exhibit 5.1

May 9, 2019

Invesco Mortgage Capital Inc.
1555 Peachtree Street, N.E.
Suite 1800
Atlanta, Georgia 30309

Re: Invesco Mortgage Capital Inc.
Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Invesco Mortgage Capital Inc., a Maryland corporation (the “*Company*”), in connection with the preparation and filing by the Company with the Securities and Exchange Commission of a registration statement on Form S-8 (the “*Registration Statement*”) under the Securities Act of 1933, as amended (the “*Securities Act*”), with respect to the offer and sale of up to 200,000 shares of the Company’s common stock, par value \$0.01 per share (the “*Shares*”), pursuant to the Invesco Mortgage Capital Inc. 2009 Equity Incentive Plan as Amended and Restated (the “*Plan*”).

As counsel to the Company, we have participated in the preparation of the Registration Statement and have examined originals or copies, certified or otherwise identified to our satisfaction by public officials or officers of the Company as authentic copies of originals, of (i) the Company’s Articles of Incorporation, as amended, restated and supplemented; (ii) the Company’s Bylaws, as amended and restated; (iii) a Certificate of Good Standing, as of a recent date, with respect to the Company from the State of Maryland issued by the Maryland Secretary of State; (iv) the Plan; (v) resolutions of the board of directors of the Company relating to, among other things, (a) the authorization and approval of the preparation and filing of the Registration Statement and (b) the authorization, issuance, offer and sale of the Shares pursuant to the Registration Statement and the Plan; and (vi) such other documents or matters of law as in our judgment were necessary to enable us to render the opinions expressed below.

With respect to such examination and our opinion expressed herein, we have assumed, without any independent investigation or verification (i) the genuineness of all signatures on all documents submitted to us for examination, (ii) the legal capacity of all natural persons, (iii) the authenticity of all documents submitted to us as originals, (iv) the conformity to original documents of all documents submitted to us as conformed or reproduced copies and the authenticity of the originals of such copied documents, and (v) that all certificates issued by public officials have been properly issued. We also have assumed without independent investigation or verification the accuracy and completeness of all corporate records made available to us by the Company.

As to certain matters of fact relevant to the opinions in this opinion letter, we have relied upon certificates and/or confirmations of public officials (which we have assumed remain accurate as of the date of this opinion), upon certificates and/or representations of officers of the Company, and upon such other certificates as we deemed appropriate. We have not independently established the facts, or in the case of certificates or confirmations of public officials, the other statements, so relied upon.

This opinion letter is limited to the effect of the Maryland General Corporation Law, as in effect on the date hereof, and we express no opinion as to the applicability or effect of any other laws of the State of Maryland or the laws of any other jurisdictions. Without limiting the preceding sentence, we express no opinion as to any state securities or broker-dealer laws or

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regulations thereunder relating to the offer, issuance and sale of the Shares pursuant to the Registration Statement and the Plan. This opinion letter has been prepared, and should be interpreted, in accordance with customary practice followed in the preparation of opinion letters by lawyers who regularly give, and such customary practice followed by lawyers who on behalf of their clients regularly advise opinion recipients regarding, opinion letters of this kind.

Based upon and subject to the limitations, exceptions, qualifications and assumptions set forth in this opinion letter, we are of the opinion that the Shares issuable pursuant to the Registration Statement and the Plan have been duly authorized and, when issued and paid for in accordance with the terms of the Plan, the Shares will be validly issued, fully paid and nonassessable.

The opinions expressed in this opinion letter (a) are strictly limited to the matters stated in this opinion letter, and without limiting the foregoing, no other opinions are to be implied and (b) are only as of the date of this opinion letter, and we are under no obligation, and do not undertake, to advise the addressee of this opinion letter or any other person or entity either of any change of law or fact that occurs, or of any fact that comes to our attention, after the date of this opinion letter, even though such change or such fact may affect the legal analysis or a legal conclusion in this opinion letter.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement. We do not admit by giving this consent that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Respectfully submitted,

/s/ Eversheds Sutherland (US) LLP

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Section 3: EX-23.2 (EX-23.2)

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of Invesco Mortgage Capital Inc. of our report dated February 20, 2019 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in Invesco Mortgage Capital Inc.'s Annual Report on Form 10-K for the year ended December 31, 2018.

/s/ PricewaterhouseCoopers LLP
Atlanta, Georgia
May 9, 2019

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