

MISSION WEST PROPERTIES INC

Form 8-K

December 13, 2012

**UNITED STATES**  
**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): December 12, 2012**

**MISSION WEST PROPERTIES, INC.**

(Exact name of registrant as specified in its charter)

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(State or Other Jurisdiction

(Commission

(I.R.S. Employer

of Incorporation)

File Number)

Identification Number)

**10050 Bandley Drive**

**Cupertino, CA**  
(Address of principal executive offices)

**(408) 725-0700**

**95014**  
(Zip Code)

(Registrant's telephone number, including area code)

**N/A**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions (see General Instruction A.2. below):

.. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

.. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

.. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

.. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240-13e-4(c))

**Item 1.01. Entry into a Material Definitive Agreement.**

On December 12, 2012, Mission West Properties, Inc. ( Mission West or the Company ) entered into a Second Amendment to Agreement of Purchase and Sale and Escrow Instructions (the Amendment ), which amended that certain Agreement of Purchase and Sale and Escrow Instructions dated as of November 2, 2012 (the Agreement ) by and between Mission West and M West Holdings, L.P. (together with its assignees, the Buyer ). The Amendment amends, among other things, certain provisions of the Agreement with respect to the properties to be acquired by the Buyer. The foregoing is qualified in its entirety by reference to the Amendment which is attached hereto as Exhibit 10.1 and incorporated by reference herein.

In addition, on December 12, 2012, Mission West received notice that the Buyer waived its termination right pursuant to Section 4.4 of the Agreement.

**Item 5.07. Submission of Matters to a Vote of Security Holders.**

Mission West held a Special Meeting of Stockholders on December 13, 2012. As of the record date of the Special Meeting, there were 22,674,020 shares of common stock entitled to vote at the Special Meeting, of which more than 50.1% of the outstanding shares were voted in person or by proxy. The following matters were voted upon as follows:

Proposal 1: To consider and vote on the approval of a recapitalization of the Company operating partnerships pursuant to the Asset Alignment and Limited Partnership Conversion Agreement and the Partnership Separation Agreement each dated November 2, 2012 by and among the Company, each of our operating partnerships and the limited partners of the operating partnership (OP Recapitalization).

| FOR        | AGAINST | ABSTAIN | BROKER NON-VOTES |
|------------|---------|---------|------------------|
| 15,660,328 | 27,920  | 7,200   | 0                |

In addition, Proposal 1 was approved by the affirmative vote of a majority of shares of the Company s common stock entitled to be cast at the Special Meeting, disregarding votes cast or entitled to be cast by M West Holdings, L.P., Carl E. Berg, or any person who is a member of the immediate family of Carl E. Berg or any entity which is controlled by Carl E. Berg.

| FOR        | AGAINST | ABSTAIN | BROKER NON-VOTES |
|------------|---------|---------|------------------|
| 13,659,028 | 27,920  | 7,200   | 0                |

Proposal 2: To consider and vote on the approval of the sale of substantially all of the Company s assets following the OP Recapitalization to M West Holdings, L.P., pursuant to the Agreement of Purchase and Sale and Escrow Instructions (Asset Sale).

| FOR        | AGAINST | ABSTAIN | BROKER NON-VOTES |
|------------|---------|---------|------------------|
| 15,667,026 | 22,422  | 6,000   | 0                |

Proposal 3: To consider and vote on the approval of the liquidation and dissolution of the Company, subject to and conditioned upon the approval and consummation of the OP Recapitalization and Asset Sale (Liquidation).

| FOR        | AGAINST | ABSTAIN | BROKER NON-VOTES |
|------------|---------|---------|------------------|
| 15,667,023 | 22,425  | 6,000   | 0                |



Proposal 4: To consider and vote on a nonbinding advisory proposal to approve compensation to certain executive officers in connection with the OP Recapitalization, the Asset Sale and the Liquidation.

| <b>FOR</b> | <b>AGAINST</b> | <b>ABSTAIN</b> | <b>BROKER NON-VOTES</b> |
|------------|----------------|----------------|-------------------------|
| 15,560,551 | 127,298        | 7,600          | 0                       |

Proposal 5: To consider and vote on the approval of the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Special Meeting to approve any of Proposals 1, 2 and 3.

| <b>FOR</b> | <b>AGAINST</b> | <b>ABSTAIN</b> | <b>BROKER NON-VOTES</b> |
|------------|----------------|----------------|-------------------------|
| 14,633,436 | 1,055,012      | 7,000          | 0                       |

**Item 9.01. Financial Statements and Exhibits**

(d) Exhibits

| Exhibit No. | Description                                                                                                                                                                                                                                     |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10.1        | Second Amendment to Agreement of Purchase and Sale and Escrow Instructions dated as of December 12, 2012, by and among Mission West Properties, Inc., M West Holdings, L.P. and the assignees of M West Holdings which are signatories thereto. |

**SIGNATURE**

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 hereunto duly authorized.

Dated: December 13, 2012

MISSION WEST PROPERTIES, INC.

By: */s/ Carl E. Berg*  
Carl E. Berg  
Chief Executive Officer

**EXHIBIT INDEX**

| Exhibit<br>No. | Description                                                                                                                                                                                                                                     |
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