

HOME DEPOT INC  
Form S-8  
June 27, 2012

As filed with the Securities and Exchange Commission on June 27, 2012

Registration No. 333-

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

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

**THE HOME DEPOT, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**95-3261426**  
(I.R.S. employer  
identification number)

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2455 Paces Ferry Road N.W.

Atlanta, Georgia 30339

(Address of Principal Executive Offices) (Zip Code)

**THE HOME DEPOT, INC. AMENDED AND RESTATED**

**EMPLOYEE STOCK PURCHASE PLAN**

(Full title of the plan)

**TERESA WYNN ROSEBOROUGH**

**EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL AND CORPORATE SECRETARY**

**THE HOME DEPOT, INC.**

**2455 PACES FERRY ROAD N.W.**

**ATLANTA, GEORGIA 30339**

(Name and address of agent for service)

**(770) 433-8211**

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

*With a copy to:*

**L. BRILEY BRISENDINE, JR.**

**STACY S. INGRAM**

**The Home Depot, Inc.**

**2455 Paces Ferry Road N.W.**

**Atlanta, Georgia 30339**

**(770) 433-8211**

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

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered<sup>(1)</sup></b>	<b>Proposed Maximum Offering Price Per Share<sup>(2)</sup></b>	<b>Proposed Maximum Aggregate Offering Price<sup>(2)</sup></b>	<b>Amount of Registration Fee<sup>(2)</sup></b>
Common Stock, \$0.05 par value per share	22,652,872	\$51.47	\$1,165,943,322	\$133,618

<sup>(1)</sup> Also registered hereunder are such additional number of shares of common stock, presently indeterminable, as may be necessary to satisfy the antidilution provisions of the Plan to which this Registration Statement relates.

<sup>(2)</sup> In accordance with Rule 457(h) and Rule 457(c) the aggregate offering price and the amount of the registration fee are computed on the basis of \$51.47, the average of the high and low prices as reported by the New York Stock Exchange on June 25, 2012.

This Registration Statement is filed pursuant to General Instruction E to Form S-8 by The Home Depot, Inc., a Delaware corporation (the Registrant), to register 22,652,872 shares of common stock, par value \$0.05 per share (the Common Stock), which shares are in addition to those previously registered on Form S-8 (File Nos. 333-110423 and 333-15184) filed with the Securities and Exchange Commission (the Commission) on November 12, 2003 and June 23, 2008, respectively, for issuance pursuant to The Home Depot, Inc. Amended and Restated Employee Stock Purchase Plan (the ESPP). The Registrant incorporates herein by reference the contents of such previously filed Registration Statements.

**PART I**

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

In accordance with the Note to Part I of Form S-8, the information specified by Part I has been omitted from this Registration Statement.

**PART II**

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

The Registrant hereby incorporates by reference the documents listed in (1) through (4) below. In addition, all documents subsequently filed by the Registrant with the Commission (other than, in each case, documents deemed to have been furnished and not filed in accordance with Commission rules) pursuant to Section 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) (prior to filing of a Post-Effective Amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold) will 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.

- (1) The Registrant's Annual Report on Form 10-K for the year ended January 29, 2012, as filed with the Commission pursuant to Section 13 of the Exchange Act;
- (2) The Registrant's Quarterly Report on Form 10-Q for the quarter ended April 29, 2012, as filed with the Commission pursuant to Section 13 of the Exchange Act;
- (3) The Registrant's Current Report on Form 8-K dated May 17, 2012, as filed with the Commission pursuant to Section 13 of the Exchange Act; and
- (4) The section entitled "Description of Common Stock" in Registrant's Report on Form 8-A, filed with the Commission pursuant to the Exchange Act.

**Item 4.** *Description of Securities.*

Not applicable.

**Item 5.** *Interests of Named Experts and Counsel.*

The legality of the common stock covered hereby has been passed upon for the Registrant by Stacy S. Ingram, Assistant Secretary and Senior Counsel, Corporate and Securities of The Home Depot, Inc. Ms. Ingram beneficially owns or has rights to acquire an aggregate of less than 0.01% of the Registrant's common stock and is eligible to participate in the ESPP.

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

The following summary is qualified in its entirety by reference to the Registrant's Amended and Restated Certificate of Incorporation, the Registrant's Amended and Restated By-Laws and the section of the Delaware General Corporation Law referred to below.

Article Ninth of the Registrant's Amended and Restated Certificate of Incorporation provides that no director of the Registrant shall be liable to the Registrant or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Registrant or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

Article V of the Registrant's Amended and Restated By-Laws provides that each former, present or future director, officer, employee or agent of the Registrant, and each person who may serve at the request of the Registrant as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall be indemnified by the Registrant in all events to the fullest extent and in the manner permitted by the laws of the State of Delaware then in effect.

Section 145 of the Delaware General Corporation Law generally provides that all directors and officers (as well as other employees and individuals) may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with certain specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation, or a derivative action), if they 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. A similar standard of care is applicable in the case of derivative actions, except that indemnification extends to the defense or settlement of an action, and the Delaware General Corporation Law requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. Section 145 of the Delaware General Corporation Law also provides that the rights conferred thereby are not exclusive of any other right to which any person may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, and permits a corporation to advance expenses to or on behalf of a person entitled to be indemnified upon receipt of an undertaking to repay the amounts advanced if it is determined that the person is not entitled to be indemnified.

In addition, the Registrant maintains officers' and directors' liability insurance for the benefit of its officers and directors.

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

Not applicable.

**Item 8.** *Exhibits.*

The Exhibit Index attached to this Registration Statement is incorporated herein by reference.

**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 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; and

(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) of this section do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this 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; and

(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 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 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.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, 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 to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Atlanta, state of Georgia, on this 27th day of June, 2012.

THE HOME DEPOT, INC.

By: /s/ Francis S. Blake  
Francis S. Blake  
Chairman and Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below under the heading *Signature* constitutes and appoints Francis S. Blake and Teresa Wynn Roseborough as his or her true and lawful attorney-in-fact, each acting alone, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities to sign any or all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact, or his or her substitute, acting alone, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Francis S. Blake Francis S. Blake	Chairman and Chief Executive Officer (Principal Executive Officer)	June 27, 2012
/s/ Carol B. Tomé Carol B. Tomé	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	June 27, 2012
/s/ F. Duane Ackerman F. Duane Ackerman	Director	June 27, 2012
/s/ Ari Bousbib Ari Bousbib	Director	June 27, 2012
/s/ Gregory D. Brenneman Gregory D. Brenneman	Director	June 27, 2012
/s/ J. Frank Brown J. Frank Brown	Director	June 27, 2012
/s/ Albert P. Carey Albert P. Carey	Director	June 27, 2012

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Albert P. Carey

/s/ Armando Codina

Director

June 27, 2012

Armando Codina

/s/ Bonnie G. Hill

Director

June 27, 2012

Bonnie G. Hill

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<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Karen L. Katen	Director	June 27, 2012
Karen L. Katen		
/s/ Ronald L. Sargent	Director	June 27, 2012
Ronald L. Sargent		

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
4.1	The Home Depot, Inc. Amended and Restated Employee Stock Purchase Plan, as amended and restated effective July 1, 2012 <b>[incorporated by reference to the Registrant's Form 10-Q for the quarter ended April 29, 2012, Exhibit 10.1]</b>
5.1	Opinion of Stacy S. Ingram, Assistant Secretary and Senior Counsel, Corporate and Securities of The Home Depot, Inc.
15.1	Letter of KPMG LLP, independent registered public accounting firm
23.1	Consent of KPMG LLP, independent registered public accounting firm
23.2	Consent of Stacy S. Ingram, Assistant Secretary and Senior Counsel, Corporate and Securities of The Home Depot, Inc. (included in Exhibit 5.1)
24.1	Powers of Attorney (included in the signature pages hereto)