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ATLANTIC REALTY TRUST
Form SC 13D
February 04, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No. 9)

Atlantic Realty Trust

(Name of Issuer)

Common Shares of Beneficial Interest, par value \$0.01 per share

(Title of Class of Securities)

048798-10-2
(CUSIP Number)

Milton Cooper
Kimco Realty Corporation
3333 New Hyde Park Road
New Hyde Park, NY 11042-0020
(516) 869-9000

with a copy to:

Raymond Y. Lin, Esq.
Erica H. Steinberger, Esq.
Latham & Watkins LLP
885 Third Avenue
New York, New York 10022-4802
(212) 906-1200

(Name, Address and Telephone Number of Person Authorized to Receive Notices
and Communications)

January 31, 2003
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement
on Schedule 13G to report the acquisition that is the subject of
this Schedule 13D, and is filing this schedule because of Rule
13d-1(e), 13d-1(f) or 13d-1(g), check the following box .

(Continued on following pages)
(Page 1 of 21 pages)

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----- 13D -----
 CUSIP No. 048798-10-2 Page 2 of 21

1 NAME OF REPORTING PERSONS
 I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (Entities only)

Kimco Realty Corporation

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
 (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC

5 CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT
 TO ITEMS 2(d) or 2(e)

CITIZENSHIP OR PLACE OF ORGANIZATION

6

Maryland

| | | |
|--------------|----|--------------------------|
| NUMBER OF | 7 | SOLE VOTING POWER |
| SHARES | | 355,498 |
| BENEFICIALLY | 8 | SHARED VOTING POWER |
| OWNED BY | | 712,539 |
| EACH | 9 | SOLE DISPOSITIVE POWER |
| REPORTING | | 355,498 |
| PERSON | 10 | SHARED DISPOSITIVE POWER |
| WITH | | 712,539 |

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,068,037

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

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30.0%

14 TYPE OF REPORTING PERSON

CO

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1 NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (Entities only)

Kimco Realty Services, Inc.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC, AF

5 CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT
TO ITEMS 2(d) or 2(e)

CITIZENSHIP OR PLACE OF ORGANIZATION

6

Delaware

| | | |
|--------------|----|--------------------------|
| NUMBER OF | 7 | SOLE VOTING POWER |
| SHARES | | None |
| BENEFICIALLY | 8 | SHARED VOTING POWER |
| OWNED BY | | 712,539 |
| EACH | 9 | SOLE DISPOSITIVE POWER |
| REPORTING | | None |
| PERSON | 10 | SHARED DISPOSITIVE POWER |
| WITH | | 712,539 |

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

712,539

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

20.0%

14 TYPE OF REPORTING PERSON

CO

CUSIP No. 048798-10-2

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1 NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (Entities only)

Milton Cooper

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT
TO ITEMS 2(d) or 2(e)

CITIZENSHIP OR PLACE OF ORGANIZATION

6

United States

NUMBER OF
SHARES 7 SOLE VOTING POWER
29,824

BENEFICIALLY
OWNED BY 8 SHARED VOTING POWER
3,127

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| | | |
|-----------|---|--------------------------|
| EACH | | SOLE DISPOSITIVE POWER |
| | 9 | |
| REPORTING | | 29,824 |
| | | ----- |
| PERSON | | SHARED DISPOSITIVE POWER |
| | 10 | |
| WITH | | 3,127 |
| | | ----- |
| 11 | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON | |
| | 32,951 | |
| | ----- | |
| 12 | CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES | |
| | X | |
| | ----- | |
| 13 | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) | |
| | .9% | |
| | ----- | |
| 14 | TYPE OF REPORTING PERSON | |
| | IN | |
| | ----- | |

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This Amendment No. 9 amends and supplements the Schedule 13D filed on May 24, 1996, and amended on July 3, 1996, by Kimco Realty Corporation, a Maryland corporation ("Kimco"), and Milton Cooper and further amended on May 15, 1997, June 10, 1997, April 30, 1998, September 20, 1999, August 10, 2000, August 23, 2000 by Kimco, Milton Cooper and Kimco Realty Services, Inc., a Delaware corporation ("Services"), and August 9, 2001 (as amended, the "Schedule 13D"), relating to the common shares of beneficial interest, par value \$.01 per share (the "Shares"), of Atlantic Realty Trust, a Maryland corporation (the "Company"). Unless otherwise indicated, all capitalized terms used herein shall have the meanings given to them in the Schedule 13D, and unless amended or supplemented hereby, all information previously filed remains in effect.

Item 2. Identity and Background.

Information with respect to the executive officers and directors of Kimco and Services, other than Mr. Cooper, required by Instruction C of Schedule 13D, is set forth on Schedule I hereto and incorporated herein by reference.

Item 4. Purpose of Transaction.

The Company's charter contains a provision limiting the number of Shares that may be owned, actually or constructively pursuant to the attribution rules set forth in Section 544 of the Internal Revenue Code of 1986, as amended, as modified by Section 856(h), or in Section 318(a) as modified by Section 856(d)(5) (constructive ownership pursuant to such attribution rules, "Constructive Ownership"), by any person to 9.8% of the total number of Shares issued and outstanding. Kimco, Mr. Cooper and the Company entered into a Standstill Agreement, dated as of April 30, 1998, pursuant to which the Company

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granted Kimco and Mr. Cooper an exception from such charter provision with respect to Shares Constructively Owned by either Kimco or Mr. Cooper in excess of 9.8% of the issued and outstanding Shares (the "Excess Shares"), and Kimco and Mr. Cooper agreed, unless specifically requested by the Company's board of trustees, not to, among other things, (i) acquire or agree or publicly offer or propose to acquire ownership or control of (A) any securities of the Company in excess of 25% of the issued and outstanding Shares or (B) any subsidiary or assets or properties of the Company or any of its subsidiaries or divisions, including by way of tender offer, business combination, merger or other consolidation (provided that nothing shall prohibit Kimco and Mr. Cooper from proposing to acquire assets which the Company has announced an intention to sell or for which it is soliciting bids) or (ii) make any "solicitation" of "proxies" (as such terms are used in the proxy rules of the Securities and Exchange Commission), and further agreed to vote any Excess Shares in accordance with the recommendation of the Company's board of trustees, (iii) form or join a "group" (as defined in Section 13(d)(3) of the Exchange Act) in connection with any of the provisions of Section 1 of the Standstill Agreement, other than a group consisting solely of two or more of Kimco, Services and Mr. Cooper and any Affiliated Persons, and (iv) disclose any intention, plan or arrangement inconsistent with the provisions of Section 1.

On August 10, 2000, the Company entered into an amended and restated standstill agreement with the Reporting Persons which increased the number of Company securities that may be acquired by the Reporting Persons and their Affiliated Persons to 30% of the issued and outstanding Shares.

On January 31, 2003, the Company entered into a second amended and restated standstill agreement with the Reporting Persons (the "Second Amended and Restated Standstill Agreement"), filed as Exhibit 5 hereto, to further increase the number of Company securities that may be acquired by the Reporting Persons and their Affiliated Persons to 33% of the issued and outstanding Shares. All other terms and conditions of original Standstill Agreement, as previously amended by the Amended and Restated Standstill Agreement, remain in effect as previously disclosed.

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Item 5. Interest in Securities of the Issuer.

(a) Kimco beneficially owns 1,068,037 Shares (which includes all of the Shares owned by Services, all of whose outstanding voting common stock is owned by Kimco), or approximately 30.0% of the outstanding Shares, and Services beneficially owns an aggregate of 712,539 Shares, or approximately 20.0% of the outstanding Shares (based on 3,561,553 Shares reported by the Company to be outstanding as of November 12, 2002, in the Company's Quarterly Report on Form 10-Q for the Period Ended September 30, 2002).

Mr. Cooper beneficially owns 32,951 Shares, or approximately .9% of the outstanding Shares, of which 2,012 Shares are held through IRA accounts, and 3,127 Shares are held by a trust for Adam Kimmel, the son of Martin S. Kimmel (the "Kimmel Trust"), for which Mr. Cooper serves as a trustee. Such holdings do not include an aggregate of 6,050 Shares held by Mr. Cooper's adult children or their spouses, an aggregate of 2,979 Shares held by nine trusts for the benefit of Mr. Cooper's grandchildren, for which certain of such adult children serve as trustees, or 3,750 Shares held by CLS General Partnership Corporation (a Delaware corporation which serves as the general partner of Power Test Investors Limited Partnership, a New York limited partnership), of which Mr. Cooper is a stockholder and serves as secretary and a director, as to all of which Shares Mr. Cooper disclaims beneficial ownership.

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Except as set forth herein, each of the Reporting Persons disclaims beneficial ownership of any Shares beneficially owned by any other person described in this Item 5(a) or on Schedule I to the Schedule 13D.

(b) Each Reporting Person has sole power to vote, or direct the vote, and to dispose or direct the disposition of, all Shares reported as beneficially owned by it or him, except that, (i) Kimco, by reason of its ownership of all of Services' voting common stock, shares the power to direct the vote or the disposition of all Shares reported as beneficially owned by Services, and (ii) with respect to the 3,127 Shares held by the Kimmel Trust, Mr. Cooper shares such power with the other trustee.

(c) No transactions in Shares were effected by or for the account of Services since December 6, 2002.

(d) No person other than the Reporting Persons is known to the Reporting Persons to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the Shares beneficially owned by the Reporting Persons, except that, with respect to the Shares owned by the Kimmel Trust, such Trust and the trustee thereof who shares such power with Mr. Cooper.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

See Item 4 for a description of the Second Amended and Restated Standstill Agreement entered into by the Reporting Persons and the Company with respect to Shares of the Company held by the Reporting Persons on January 31, 2003.

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Item 7. Material to be Filed as Exhibits.

Exhibit 5. Second Amended and Restated Standstill Agreement

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Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

KIMCO REALTY CORPORATION

By: /s/ Milton Cooper

Name: Milton Cooper
Title: Chairman and Chief Executive
Officer

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KIMCO REALTY SERVICES, INC.

By: /s/ Milton Cooper

Name: Milton Cooper
Title: President

/s/ Milton Cooper

Milton Cooper

Dated: February 3, 2003

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EXHIBIT INDEX

| Exhibit | Page Number |
|---|-------------|
| 1. Joint Filing Agreement | * |
| 2. Joint Filing Agreement | * |
| 3. Standstill Agreement | * |
| 4. Amended Standstill Agreement | * |
| 5. Second Amended and Restated Standstill Agreement | 12 |

* Previously filed

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SCHEDULE I

Set forth below is the name, principal business, business address and beneficial ownership of Shares of each executive officer and director of Kimco and Services, other than Milton Cooper, for whom such information is contained in Items 2 and 5 of the Schedule 13D. Unless otherwise indicated, the current business address of each person is c/o Kimco, 3333 New Hyde Park Road, Suite 100, New Hyde Park, NY 11041-0020. Each such person is a citizen of the United States of America.

Executive Officers & Directors of Kimco and Services.

| Name ----- | Principal Occupation or Employment ----- | Sha ----- |
|------------------|---|--------------|
| Martin S. Kimmel | Director of Kimco and Services, Chairman (Emeritus) of the Board of Directors of Kimco and Services | |

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| | |
|---|--|
| Michael J. Flynn | Vice Chairman of the Board of Directors of Kimco and Services, President and Chief Operating Officer of Kimco and Services |
| Richard G. Dooley c/o Massachusetts Mutual Life Insurance Company 1295 State Street Springfield, Mass. 01111 | Director of Kimco; Consultant to Massachusetts Mutual Life Insurance Company |
| Joe Grills 11479 Twin Mountains Road Clifton, VI 22733 | Director of Kimco; Chief Investment Officer for the IBM Retirement Funds, 1986-1993 |
| Frank Lourenso c/o The Chase Manhattan Bank 270 Park Avenue New York, NY 10017 | Director of Kimco; Executive Vice President of J.P. Morgan |
| Thomas A. Caputo | Executive Vice President of Kimco and Services |
| Glenn G. Cohen | Vice President and Treasurer of Kimco and Services |
| Ray Edwards | Vice President of Kimco and Services |
| Jerald Friedman | Executive Vice President of Kimco and Services |
| David Henry | Vice Chairman of the Board of Directors of Kimco and Chief Investment Officer of Kimco and Services |
| Bruce M. Kauderer | Vice President, Legal and Secretary of Kimco and Services |

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| Name ----- | Principal Occupation or Employment ----- | Sha --- |
|-----------------------|---|------------|
| Michael V. Pappagallo | Chief Financial Officer of Kimco and Services | |
| David Samber | Vice President of Kimco and Services | |

- 1 All of such Shares were received in the Distribution and no consideration was paid therefor.
- 2 Does not include 14,135 Shares beneficially owned by Mr. Kimmel's wife or 3,127 by a trust for the benefit of Mr. Kimmel's son, for which Mr. Cooper

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serves as trustee, as to which Mr. Kimmel disclaims beneficial interest. Such Shares were received in the Distribution and no consideration was paid therefor.