

DYNEX CAPITAL INC
Form PRE 14A
January 23, 2004

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

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934
(Amendment No. __)

Filed by the Registrant Filed by a Party other than the Registrant

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
- Soliciting Material under § 240.14a-12

DYNEX CAPITAL, INC.

Edgar Filing: DYNEX CAPITAL INC - Form PRE 14A

(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):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials:

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offset fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party

(4) Date Filed:

THIS IS A PRELIMINARY PROXY STATEMENT AND IS SUBJECT TO COMPLETION. IT

HAS NOT, AND WILL NOT, BE MAILED TO STOCKHOLDERS.

[Dynex Capital logo]

, 2004

To Our Common Stockholders:

You are cordially invited to attend a special meeting of Common Stockholders of Dynex Capital, Inc. The meeting will be held at Dynex Capital's corporate offices located at 4551 Cox Road, Suite 300, Glen Allen, Virginia, on _____, _____, 2004 at 10:00 a.m. Eastern time.

At the special meeting, you will be asked to consider and approve the issuance of additional shares of Dynex Capital's Common Stock pursuant to an amendment to our articles of incorporation that will create a new series of convertible preferred stock. The amendment is part of an important recapitalization transaction intended to simplify Dynex Capital's capital structure. The recapitalization involves an offer to exchange new 9.5% Senior Notes for up to 70% of the outstanding shares of each of our series of Preferred Stock (Series A, Series B and Series C) (the Note Offer) and the conversion of the shares of each of our series of Preferred Stock not tendered in the Note Offer into shares of a new Series D Preferred Stock and Common Stock (the Series D conversion). The new Series D Preferred Stock will include improved conversion features, which could result in additional shares of Common Stock being issued in the future. As explained in greater detail below, we are undertaking this recapitalization in order to enhance our ability to pursue strategic alternatives, to enhance overall stockholder value by completing the recapitalization of our existing series of Preferred Stock at discounts to their current liquidation preferences, and to provide the holders of the Preferred Stock with increased liquidity for their shares.

In accordance with requirements of the New York Stock Exchange, the issuance of additional shares of Common Stock pursuant to the Series D conversion and potential future conversions of the Series D Preferred Stock requires the approval of the holders of a majority of the shares of Common Stock voted at a meeting of Common Stockholders at which a quorum is present.

Concurrently with the mailing of the accompanying proxy statement, Dynex Capital is separately seeking the approval by the holders of each series of Dynex Capital's three series of Preferred Stock of the amendment of Dynex Capital's articles of incorporation that will implement the Series D conversion. The adoption of the amendment by the holders of Preferred Stock requires the approval at a special meeting of the holders of two-thirds of the outstanding shares of each of the three series of Preferred Stock. A separate notice and proxy statement is being mailed to all holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (collectively, the Preferred Stockholders) in connection with that special meeting, which will be held concurrently with the special meeting of Common Stockholders to which this letter and the accompanying proxy statement relate.

Dynex Capital is also commencing the Note Offer concurrently with the mailing of the accompanying proxy statement, through an offering circular distributed to all Preferred Stockholders. The Note Offer, Dynex Capital is seeking tenders of up to approximately 70% of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock in exchange for a new series of 9.5% Senior Notes. If the amendment to the articles of incorporation authorizing the conversion of any remaining shares of Series A, Series B and Series C Preferred Stock into Series D Preferred Stock and Common Stock is approved at the special meeting of Preferred Stockholders and the issuance of additional shares of

Common Stock is approved at the special meeting of Common Stockholders, both the Note Offer and the Series D conversion (including the issuance of additional shares of Common Stock) are expected to be completed and become effective as soon as practicable following the special meetings.

If the recapitalization is completed, the three existing classes of Preferred Stock would be eliminated, and the accumulated dividend arrearages on those shares would also be eliminated. At December 31, 2003, there were a total of 1,866,677 shares of Preferred Stock of all three classes outstanding. At that date, those shares had an aggregate liquidation preference of \$67.7 million, an aggregate dividend arrearage of \$18.5 million, and a potential right to convert into 933,338 shares of Common Stock. If the maximum tender of approximately 70% of the outstanding shares of the Preferred Stock for 9.5% Senior Notes in the Note Offer occurs, and the Series D conversion is completed, there will be approximately 1,713,304 shares of Series D Preferred Stock outstanding with an aggregate liquidation preference of \$17.1 million, 392,230 shares of Common Stock would be issued in connection with Series D conversion, and 1,713,304 additional shares of Common Stock could potentially be issued in future conversions of the Series D Preferred Stock. If the minimum tender of approximately 17.5% of the outstanding shares of the Preferred Stock occurs, and the Series D conversion is completed, there will be approximately 4,713,288 shares of Series D Preferred Stock outstanding with an aggregate liquidation preference of \$47.1 million, 1,079,091 shares of Common Stock would be issued in connection with Series D conversion, and 4,713,288 additional shares of Common Stock could potentially be issued in future conversions of the Series D Preferred Stock. We expect the tender of Preferred Stock for 9.5% Senior Notes to become accretive to book value per share of Common Stock as and if the percentage of Preferred Stock tendered increases above the 17.5% minimum.

Dynex Capital is proposing the recapitalization (including the issuance of additional shares of Common Stock as a result of the Series D conversion and the potential future conversions of the Series D Preferred Stock) because it believes, among other reasons, that:

The elimination of the dividend arrearages in the three separate series of Preferred Stock at a discount, the replacement of three series of Preferred Stock with a single series, and the reduction in the overall amount of Preferred Stock outstanding, will simplify Dynex Capital's capital structure and should create improved opportunities for Dynex Capital to engage in strategic transactions, access the capital markets, and/or reinvest in business activities.

Assuming a closing date of April 7, 2004, the recapitalization is estimated to increase our book value per common share by up to \$0.53 per common share from the September 30, 2003 value, depending upon the number of shares of Preferred Stock tendered in the Note Offer.

Because we are not using cash to effect the Note Offer or the Series D conversion, the recapitalization will permit us to accomplish our objectives while retaining cash for strategic initiatives.

The improved conversion features of the Series D Preferred Stock will better align the interests of our Preferred Stockholders with those of our Common Stockholders by creating greater opportunities for the holders of Preferred Stock to participate in any future success in the Company's business strategies.

A committee of the board of directors reviewed and considered the terms of the recapitalization and unanimously recommended the approval of those terms, including the issuance of additional shares of Common Stock as a result of the Series D conversion and the potential future conversions of the Series D Preferred Stock, to the board of directors. The board of directors has determined that the recapitalization

is both substantively and procedurally fair to Dynex Capital's unaffiliated Common Stockholders and unaffiliated Preferred Stockholders and is advisable and in the best interests of Dynex Capital and its stockholders, and recommends that Dynex Capital's Common Stockholders vote to authorize the issuance of additional shares of Common Stock in connection with the Series D conversion and potential future conversions of the Series D Preferred Stock.

The board of directors did not retain the services of a financial advisor to render an opinion as to the fairness of the recapitalization transaction, but reached an independent determination that the transaction, including the Series D conversion and the issuance of additional shares of Common Stock, is substantively and procedurally fair to Dynex Capital's unaffiliated Common Stockholders and unaffiliated Preferred Stockholders. Dynex Capital did not retain an independent advisor to represent the interests of unaffiliated stockholders.

The board of directors unanimously recommends that you vote FOR the proposal to approve the issuance of additional shares of Common Stock as provided for by the proposed amendment to our articles of incorporation that will create a new Series D Preferred Stock.

Even if the Common Stockholders authorize the issuance of additional shares of Common Stock, we may not complete the recapitalization if any of several other conditions are not satisfied. These conditions include:

The approval by our Preferred Stockholders of the amendment to our articles of incorporation to accomplish the Series D conversion;
and

The tender by our Preferred Stockholders of shares of Preferred Stock that will result in the issuance of at least \$10,000,000 in principal amount of new Senior Notes.

Information about the special meeting of Common Stockholders and the business to be considered and voted upon at the special meeting is included in the accompanying notice of special meeting and proxy statement. These materials include a summary of the recapitalization, including the Series D conversion, and additional information about the parties involved and their interests in the recapitalization, including the Series D conversion. We encourage you to read and consider carefully the information contained in the proxy statement. In addition, you may find additional information about our company from documents we have filed with the Securities and Exchange Commission (SEC), including our combined Issuer Tender Offer Statement and Rule 13E-3 Transaction Statement filed on Schedule TO with the SEC.

Your vote is important regardless of the number of shares you own. ***We urge you to complete, sign, date and return the enclosed proxy card as soon as possible, even if you currently plan to attend the meeting.*** Returning a proxy card will not prevent you from attending the special meeting and voting in person, but will ensure that your vote is counted if you are unable to attend the meeting.

Thank you for your interest and participation.

Sincerely,

Thomas B. Akin

Chairman of the Board

Stephen J. Benedetti

Executive Vice President and

Chief Financial Officer

The shares of Common Stock to be issued in the Series D conversion and upon future conversions of Series D Preferred Stock will be issued pursuant to an exemption from registration under Section 3(a)(9) of the Securities Act of 1993, as amended. The United States Securities and Exchange Commission does not pass upon the merits of the Common Stock, nor does it pass upon the accuracy or completeness of this proxy statement or any other document.

[Dynex Capital logo]

4551 Cox Road, Suite 300

Glen Allen, Virginia 23060

(804) 217-5800

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To Our Common Stockholders:

Notice is hereby given that a special meeting of Common Stockholders of Dynex Capital, Inc. will be held at Dynex Capital's corporate offices located at 4551 Cox Road, Suite 300, Glen Allen, Virginia, on _____, _____, 2004 at 10:00 a.m., Eastern time for the following purposes:

1. To approve the issuance of additional shares of Common Stock, as provided for in a proposed amendment to our articles of incorporation, in conjunction with the automatic conversion of our Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock into new Series D Preferred Stock and Common Stock (the "Series D conversion") and the potential further issuance of additional shares of Common Stock if the new shares of Series D Preferred Stock are converted into Common Stock in the future.
2. To approve adjournments of the special meeting in order to allow Dynex Capital to continue to solicit proxies from holders of Common Stock who have not cast a vote by proxy with respect to the approval of the proposal, or whose proxies have not been voted in favor of the proposal.
3. To transact such other business as may properly come before the meeting or any adjournment or postponement thereof. The board of directors is not aware of any other business to come before the special meeting.

These proposals are more fully described in the proxy statement that accompanies this notice. Please read the proxy statement carefully when determining how to vote on these proposals.

Concurrently with the mailing of the accompanying proxy statement, Dynex Capital is separately seeking the approval by the holders of each series of Dynex Capital's three series of Preferred Stock of the amendment of Dynex Capital's articles of incorporation that will accomplish the Series D conversion. The approval of the amendment that will implement the Series D conversion requires the affirmative vote of the holders of two-thirds of the outstanding shares of each of the three series of Preferred Stock. A separate notice and proxy statement is being mailed to all holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (collectively, the "Preferred Stockholders") in connection with a special meeting of the Preferred Stockholders to be held concurrently with the special meeting of Common Stockholders to which this notice relates.

Edgar Filing: DYNEX CAPITAL INC - Form PRE 14A

Dynex Capital is also commencing an exchange offer (the Note Offer), concurrently with the mailing of the accompanying proxy statement, through an offering circular distributed with this notice and the accompanying proxy statement to all Preferred Stockholders. In the Note Offer, Dynex Capital is seeking tenders of up to approximately 70% of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock in exchange for a new series of 9.5% Senior Notes.

In accordance with requirements of the New York Stock Exchange, the issuance of additional shares of Common Stock pursuant to the Series D conversion and potential future conversions of the Series D Preferred Stock requires the approval of the holders of a majority of the shares of Common Stock voted at a meeting of Common Stockholders at which a quorum is present. If the proposal to authorize the issuance of additional shares of Common Stock pursuant to the Series D conversion and potential future conversions of the Series D Preferred Stock is approved at the Special Meeting of Common Stockholders and the amendment to Dynex Capital's articles of incorporation providing for the Series D conversion is approved at the special meeting of Preferred Stockholders, both the Note Offer and the Series D conversion (including the issuance of additional shares of Common Stock) are expected to be completed and become effective as soon as practicable following the special meetings.

The Series D conversion and the Note Offer are part of an important recapitalization transaction that is intended to simplify Dynex Capital's capital structure in order to enhance our ability to pursue strategic alternatives, to enhance overall stockholder value by completing the recapitalization of Preferred Stock at discounts to their current liquidation preferences, and to provide the holders of the Preferred Stock with increased liquidity for their shares. If either the proposal to authorize the issuance of additional shares of Common Stock pursuant to the Series D conversion and potential future conversions of the Series D Preferred Stock or the Series D conversion itself is not approved, then neither the Note Offer nor the Series D conversion (together, the recapitalization), as currently proposed, will be implemented.

The board of directors has fixed the close of business on _____, 2004 as the record date for the determination of stockholders entitled to notice of and to vote at the special meeting and at any adjournment or postponement thereof.

After careful consideration as to the fairness of the recapitalization, from a financial point of view, to Dynex Capital's unaffiliated Common Stockholders and unaffiliated Preferred Stockholders, including the exchange ratios relating to the Senior Notes offered in the Note Offer and the Series D Preferred Stock and Common Stock offered in the Series D conversion, Dynex Capital's board of directors determined that the Note Offer and the Series D conversion are substantively and procedurally fair to Dynex Capital's unaffiliated Common Stockholders and unaffiliated Preferred Stockholders and are advisable and in the best interests of Dynex and its stockholders, and directed that the proposal to authorize the issuance of additional shares of Common Stock be submitted to Dynex Capital's Common Stockholders for their approval. Dynex Capital's board of directors recommends that you vote **FOR the proposal.**

A proxy card accompanies this notice of special meeting and the proxy statement. ***Whether or not you expect to attend the special meeting, please complete, sign and date the enclosed proxy card and return it promptly.*** If you plan to attend the special meeting and wish to vote your shares personally, you may do so at any time before the proxy is voted.

All Common Stockholders are cordially invited to attend the meeting.

By Order of the Board of Directors

Stephen J. Benedetti

Secretary

Glen Allen, Virginia

_____, 2004

PROXY STATEMENT

TABLE OF CONTENTS

	<u>Page</u>
<u>SUMMARY OF THE PROPOSAL</u>	1
<u>WHO CAN HELP ANSWER YOUR QUESTIONS?</u>	8
<u>INFORMATION ABOUT THE MEETING</u>	9
<u>Voting at the Meeting</u>	9
<u>Revocation of Proxies</u>	9
<u>Solicitation of Proxies</u>	9
<u>Record Date, Quorum and Required Vote</u>	10
<u>PROPOSAL: AUTHORIZATION OF ISSUANCE OF ADDITIONAL SHARES OF COMMON STOCK</u>	10
<u>Issuance of Shares of Common Stock in Series D Conversion</u>	10
<u>Basis of the Series D Conversion</u>	11
<u>Issuance of Shares of Common Stock as a Result of Future Conversions of the Series D Preferred Stock</u>	12
<u>No Appraisal Rights</u>	12
<u>Dividends on the Common Stock and Preferred Stock</u>	12
<u>Preemptive Rights</u>	13
<u>Vote Required</u>	13
<u>Fees and Expenses</u>	14
<u>Conditions to the Series D Conversion</u>	14
<u>Board Recommendation</u>	16
<u>Possible Adjournment of the Meeting</u>	16
<u>FORWARD-LOOKING STATEMENTS</u>	17
<u>SUMMARY HISTORICAL AND PRO FORMA FINANCIAL INFORMATION</u>	18
<u>Price Range of Common Stock</u>	23
<u>Dividends</u>	23
<u>Ratio of Earnings to Fixed Charges</u>	24
<u>BACKGROUND OF THE RECAPITALIZATION</u>	25
<u>General</u>	25
<u>Reasons for the Recapitalization</u>	27
<u>Negative Factors Considered by the Board of Directors and the Board Committee</u>	31
<u>Recommendation of the Board of Directors; Fairness of the Recapitalization</u>	31
<u>Interests of Dynex Capital's Directors and Affiliated Parties in the Recapitalization</u>	33
<u>EFFECT OF THE SERIES D CONVERSION ON THE COMMON STOCK</u>	34
<u>CAPITALIZATION</u>	35
<u>MANAGEMENT</u>	36
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	38
<u>CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS</u>	41
<u>INDEPENDENT ACCOUNTANTS</u>	41
<u>STOCKHOLDER PROPOSALS</u>	41
<u>INCORPORATION BY REFERENCE</u>	41
<u>OTHER BUSINESS</u>	42

Exhibits

Appendix A Amendment to Articles of Incorporation

[Dynex Capital logo]

SUMMARY OF THE PROPOSAL

This summary term sheet highlights selected material information from this proxy statement, but may not contain all of the information that is important to you. To better understand the Series D conversion and the issuance of additional shares of Common Stock pursuant to the Series D conversion and potential future conversions of the Series D Preferred Stock, and for a more complete description of the terms of the Series D Preferred Stock, you should carefully read this entire proxy statement and the other documents referred to in this proxy statement. The actual terms of the Series D conversion are contained in the proposed amendment to our articles of incorporation included in this proxy statement as Appendix A. When used in this proxy statement, the terms Company, Dynex Capital, we, our, ours and us refer to Dynex Capital, Inc. and its consolidated subsidiaries, unless otherwise specified or the context requires otherwise. The term unaffiliated, when used in the phrase unaffiliated holders of Common Stock or unaffiliated holders of Preferred Stock means stockholders who are not directors or officers of Dynex Capital, and who are not persons or entities affiliated with any director or officer of Dynex Capital.

What Is Dynex Capital Seeking to Accomplish?

Dynex Capital is seeking to recapitalize its capital structure. We seek to accomplish this recapitalization through two steps: (1) an offer to Preferred Stockholders to exchange their shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock for new 9.5% Senior Notes, as disclosed in a separate offering circular mailed to all Preferred Stockholders (the Note Offer) and (2) an amendment to our articles of incorporation that will eliminate all shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock not tendered and accepted by us in the Note Offer and simultaneously convert all such shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock into shares of a new Series D Preferred Stock and Common Stock (the Series D conversion). The issuance of additional shares of Common Stock pursuant to the Series D conversion and potential future conversions of the Series D Preferred Stock is described in detail in this proxy statement.

What Are the Benefits of the Recapitalization to the Common Stockholders?

The elimination of the dividend arrearages in the three separate series of Preferred Stock at a discount, the replacement of three series of Preferred Stock with a single series, and the reduction in the overall amount of Preferred Stock outstanding, will simplify Dynex Capital's capital structure and should create improved opportunities for Dynex Capital to engage in strategic transactions, access the capital markets, and/or reinvest in business activities.

The recapitalization should increase our book value per common share. If the recapitalization is consummated on the anticipated closing date of April 7, 2004, book value per common share is estimated to increase by up to \$0.53 per share from the September 30, 2003 value, depending upon the number of shares of Preferred Stock tendered in the Note Offer.

Because we are not using cash to effect the Note Offer or the Series D conversion, the recapitalization will permit us to accomplish our objectives while retaining cash for strategic initiative purposes.

The improved conversion features of the Series D Preferred Stock and the issuance of additional Common Stock in connection with the Series D conversion will better align the interests of our Preferred Stockholders with those of our Common Stockholders by creating greater opportunities for the holders of Preferred Stock to participate in any future success in the Company's business strategies.

See Background of the Recapitalization Reasons for the Recapitalization.

What Transactions Are Involved in the Series D Conversion?

The Series D conversion will convert our three series of Preferred Stock into a single series of Series D Preferred Stock. If the amendment to our articles of incorporation is approved by the holders of two-thirds of the outstanding shares of each of the three series of Preferred Stock and the other conditions to the recapitalization are satisfied or waived, the outstanding shares of each series of Preferred Stock will automatically be converted into shares of our Series D Preferred Stock. Holders of the existing Preferred Stock whose shares are converted into Series D Preferred Stock will also receive, as part of the conversion, shares of our Common Stock, and may receive cash in lieu of fractional shares of Series D Preferred Stock and Common Stock.

The Series D conversion is part of a recapitalization plan that also includes a separate Note Offer to exchange Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock for our new 9.5% Senior Notes. The Note Offer is described more completely in the separate offering circular being mailed to our Preferred Shareholders.

Because the Note Offer would be expected to be completed immediately before we file the amendment to our articles of incorporation that will create the Series D Preferred Stock, the Series D conversion that is part of the recapitalization will occur only with respect to shares of our existing Preferred Stock that are not tendered to and accepted by us in exchange for Senior Notes in the Note Offer. For more information about the terms of the conversion of the existing Preferred Stock, see Proposal: Authorization of Issuance of Additional Shares of Common Stock Basis of the Series D Conversion.

Is Dynex Capital Willing To Complete Only Part of the Recapitalization?

No. If the issuance of additional shares of Common Stock is not approved by the Common Stockholders or the Series D conversion is not approved by the Preferred Stockholders, we will not consummate any portion of the Note Offer. Likewise, if the amount of Senior Notes to be issued to tendering stockholders in the Note Offer is not at least \$10 million, we do not intend to complete either the Note Offer or the Series D conversion.

Will My Ownership of Dynex Capital be Diluted by the Issuance of Additional Shares of Common Stock in the Restructuring?

Yes. If the Note Offer is accepted by a minimum of 17.5% or a maximum of 70% of the holders of the existing Preferred Stock, we would issue approximately 1,079,091 or 392,230 shares, respectively, of additional Common Stock in the Series D conversion. These additional shares would represent 9.9% or 3.6%, respectively, of the issued and outstanding shares of Common Stock. In addition, if the Note Offer is accepted by a minimum of 17.5% or a maximum of 70% of the holders of the existing Preferred Stock, we would issue 4,713,288 and 1,713,304 shares of new Series D Preferred Stock, respectively. These shares would be convertible into Common Stock in the future on a one-for-one basis. Currently the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock are convertible into 933,338 shares of Common

Stock. However, the liquidation value of the Series D Preferred Stock is \$10

per share, which exceeds the market price of the Common Stock as of _____, _____. In addition, if the recapitalization is consummated on the anticipated close date of April 7, 2004, we expect the tender of Preferred Stock for 9.5% Senior Notes to become accretive to book value per share of Common Stock as and if the percentage of Preferred Stock tendered increases above the 17.5% minimum.

What Process Did the Board Use in Deciding to Pursue the Recapitalization?

The decision to pursue the recapitalization was the result of deliberations by the board of directors and a committee of the board appointed in 2002 to consider the possibility of changes in our capital structure and other strategic alternatives. The committee held numerous meetings and considered a variety of alternatives, and recommended the recapitalization, including the Note Offer and the Series D conversion, to the full board, which unanimously approved the proposed recapitalization. See [Background of the Recapitalization](#) [Reasons for the Recapitalization](#) and [Recommendation of the Board of Directors; Fairness of the Recapitalization](#).

Has the Board of Directors Recommended That I Vote FOR the Issuance of Additional Shares of Common Stock Pursuant to the Series D Conversion and Potential Future conversions of the Series D Preferred Stock?

Yes. The board of directors has unanimously approved the Series D conversion, including the issuance of additional shares of Common Stock, and recommends to the Common Stockholders the approval of the proposal to authorize the additional shares of Common Stock pursuant to the Series D conversion and potential future conversions of the Series D Preferred Stock. See [Background of the Recapitalization](#) [Reasons for the Recapitalization](#).

Do the Board and the Committee Believe that the Recapitalization is Fair to Existing Stockholders?

Yes. Although the board of directors and the board committee did not obtain an appraisal or fairness opinion from a separate financial advisor, the board and the committee believe that the Series D conversion, in conjunction with the Note Offer, is both substantively and procedurally fair to the existing holders of Common Stock and the Preferred Stock, including the unaffiliated stockholders. The reasons for the board's and the committee's determination include:

the holders of Common Stock will benefit from the recapitalization notwithstanding the issuance of additional shares of Common Stock in the Series D conversion because the recapitalization should increase our book value per common share, depending upon the number of shares of Preferred Stock tendered in the Note Offer;

the improved conversion features of the Series D Preferred Stock and the issuance of additional Common Stock in connection with the Series D conversion will better align the interests of our Preferred Stockholders with those of our Common Stockholders by creating greater opportunities for the holders of Preferred Stock to participate in any future success in the company's business strategies;

the holders of the new Series D Preferred Stock will be assured of continued representation on the board of directors of Dynex Capital, whereas their right to representation on the board of directors under the terms of the existing Preferred Stock depends on our failure to cure current dividend arrearages; and

the fact that the Series D conversion will not take place unless the issuance of additional shares of Common Stock and possible future issuance of Common Stock in conjunction with any future conversions of Series D Preferred Stock are approved by the holders of a

majority

of the shares of the Common Stock present at a meeting of the Common Stockholders of Dynex Capital, and the fact that because the members of the board of directors and the sole executive officer of Dynex Capital hold in aggregate less than 15% of the outstanding shares of the Common Stock, this approval requirement will require substantial support by the unaffiliated holders of Common Stock.

See Background of the Recapitalization Reasons for the Recapitalization.

Did the Board of Directors and the Committee Consider Alternatives to the Note Offer and the Series D Conversion?

Yes. The board of directors and the board committee considered four principal alternatives to the Note Offer and Series D conversion:

Sale. Dynex Capital began exploring the possible sale of the company in 1999, resulting in the execution of a merger agreement in November 2000. For a number of reasons, the transaction was not completed and the merger agreement was terminated in January 2001. Since that time Dynex Capital has had various discussions with possible interested parties, but has held no substantive discussions since June 2002. The board and the committee believe that our ability to pursue a sale transaction is hampered by the complexity of our capital structure and by our continued ownership of certain assets that are disfavored in the current market, including our portfolio of manufactured home loans. We also had net operating loss carryforwards of approximately \$130 million as of December 31, 2002, and have not been able to find a transaction that would allow our stockholders to receive suitable consideration for that asset.

Liquidation. We have considered the possibility of liquidating the assets on our balance sheet and returning the proceeds of liquidation to our stockholders. The board and the committee have concluded that we would be unable in the near term to realize the full value of our assets, including our large loss carryforwards, through a liquidation scenario. The difficulty of conducting a successful liquidation is affected by our ownership of complex financial assets that are difficult to price, and by the fact that in a liquidation scenario we would likely be required to substantially discount assets on our balance sheet in order to find a willing buyer.

Strategic alternatives. We have also considered the pursuit of strategic alternatives that would allow us to expand our business and more fully use the available loss carryforwards. As we have previously reported, we have explored the pursuit of a variety of strategic alternatives, including engaging a third-party manager and the possibility of acquiring a financial institution. The substantial dividend arrearages on the Preferred Stock, together with the overall complexity of our capital structure, have been impediments to the successful pursuit of a number of strategic alternatives we have considered.

No recapitalization. We have also considered the effect of electing not to restructure our Preferred Stock. Although we believe that we will generate cash flow sufficient to eliminate the dividend arrearages and/or pay future dividends, this option does not permit us to deploy as much capital to strategic alternatives and does not solve our long-term need to simplify our capital structure.

See Background of the Recapitalization Reasons for the Recapitalization.

Will the Recapitalization Result in a Change of Control of Dynex Capital?

No. If the Note Offer is accepted by a minimum of 17.5% or a maximum of 70% of the holders of the existing Preferred Stock, we would issue approximately 1,079,091 or 392,230 shares, respectively, of additional Common Stock in the Series D conversion. These additional shares would represent only 9.9% or 3.6%, respectively, of the issued and outstanding shares of Common Stock. In addition, if the Note Offer is accepted by a minimum of 17.5% or a maximum of 70% of the holders of the existing Preferred Stock, we would issue 4,713,288 and 1,713,304 shares of new Series D Preferred Stock, respectively. These shares would be convertible into shares of Common Stock in the future on a one-for-one basis.

Does the Recapitalization Involve any Conflicts of Interest?

Yes. In considering the recommendations of the board committee and the board of directors, you should be aware that four of Dynex Capital's directors, including three of the directors who served on the committee, are beneficial owners of Preferred Stock and may have interests that conflict with your interests as a holder of the Common Stock.

Because these directors own Preferred Stock, their interests in establishing terms of the Series D Preferred Stock that provide for the receipt of additional shares of Common Stock and allow for future conversion rights are different from the interests of the holders of the Common Stock, and it is possible that their recommendations with respect to the Series D conversion may have been influenced by economic interests not shared by the holders of the Common Stock.

See Background of the Recapitalization Reasons for the Recapitalization.

Did the Board and the Committee Retain a Financial Advisor?

No. The committee and the board of directors determined that it was unnecessary to hire an outside financial advisor to evaluate the Note Offer and the Series D conversion. As described above, the committee and board of directors determined that the Note Offer and the Series D conversion were substantively fair to the holders of each series of Preferred Stock, to the holders of Dynex Capital's Common Stock and to Dynex Capital as a whole. Because the fairness analysis already conducted by the committee and the board of directors reflected the fact that holders of each series of Preferred Stock will be treated equally and that the holders of Preferred Stock will be expected to receive Senior Notes, Series D Preferred Stock and Common Stock that would be listed for trading in public securities market, and because the committee and the board of directors concluded that the valuations of Dynex Capital as a going concern or for liquidation purposes would not be meaningful, the committee and board did not believe it was necessary to obtain the opinion of a separate financial advisor.

The board of directors and the committee also concluded that the Series D conversion (including the issuance of additional shares of Common Stock) is procedurally fair to the unaffiliated holders of Common Stock and Preferred Stock. The board of directors and the committee took into account the fact that because of the two-thirds voting requirement, the terms of the Series D conversion would be required to be approved by a majority of disinterested holders of each series of Preferred Stock, as well as the fact that the issuance of additional shares of Common Stock in conjunction with the Series D conversion and the potential future conversions of the Series D Preferred Stock would be subject to approval by the holders of a majority of our Common Stock that are present and voting at the special meeting of Common Stockholders.

Edgar Filing: DYNEX CAPITAL INC - Form PRE 14A

See Background of the Recapitalization Reasons for the Recapitalization.

Who Will Serve as the Information Agent in Connection With the Series D Conversion (Including the Issuance of Additional Shares of Common Stock)?

MacKenzie Partners, Inc. will serve as Information Agent in connection with the Series D conversion (including the proposal to issue additional shares of Common Stock). The Information Agent's telephone number is (212) 929-5500 or (800) 322-2885 (toll free). See Information About the Meeting Solicitation of Proxies and the information set forth on the back cover of this proxy statement. The Information Agent can help answer your questions.

When is the Recapitalization Expected to Be Completed?

Subject to the necessary stockholder approvals and satisfaction or waiver of the other closing conditions discussed below, we expect the recapitalization (including the issuance of additional shares of Common Stock pursuant to the Series D conversion) to be completed on the day of the meetings of the Common Stockholders and the Preferred Stockholders, or shortly after that date.

What are the Conditions to Completing the Recapitalization?

The completion of the recapitalization is subject to several conditions, including the following:

approval of the amendment to our articles of incorporation by the holders of at least two-thirds of the outstanding shares of each series of the existing of the Preferred Stock.

approval of the issuance of additional Common Stock in connection with the Series D conversion by the holders of a majority of the shares of Common Stock present at the special meeting.

the tender of shares of Preferred Stock that will result in the issuance of at least \$10,000,000 in principal amount of our new Senior Notes.

The recapitalization is also subject to certain general conditions, including the absence of court or other governmental actions prohibiting the Series D conversion, general market conditions, the condition of our business, and the conditions to the completion of the Note Offer. See Proposal: Authorization of Issuance of Additional Shares of Common Stock Conditions to the Series D Conversion. We are not aware of any factors that would cause the failure of any of the closing conditions.

If either the issuance of additional shares of Common Stock or the Series D conversion is not approved, we expect to terminate the Note Offer without accepting any of the shares of Preferred Stock that are tendered. The holders of Preferred Stock will continue to hold those shares, and will continue to be entitled to the dividends and other rights now provided for with respect to each series of the Preferred Stock.

See Proposal: Authorization of Issuance of Additional Shares of Common Stock Vote Required and Conditions to the Series D Conversion.

When and Where is the Meeting?

The meeting will take place on _____, 2004, at 10:00 a.m., Eastern Time, at Dynex Capital's corporate offices located at 4551 Cox Road, Suite 300, Glen Allen, Virginia. See Information About the Meeting.

What Will be Voted on at the Meeting?

At the special meeting:

the Common Stockholders will vote upon a proposal to authorize the issuance of additional shares of Common Stock in conjunction with the Series D conversion and potential future conversions of the Series D Preferred Stock.

if necessary, the stockholders may be asked to consider adjourning the meeting in order for Dynex Capital to continue to solicit proxies from stockholders who have not yet voted or who have not voted in favor of the proposal to authorize the issuance of additional shares of Common Stock.

the stockholders will transact other business that may come before the meeting.

See Information About the Meeting Voting at the Meeting.

Who is Entitled to Vote?

Only Common Stockholders of record at the close of business on February _____, 2004, which is the Record Date, are entitled to notice of, and to vote at, the special meeting.

What Stockholder Vote is Required to Approve the Issuance of Additional Shares of Common Stock?

The proposal to authorize the issuance of additional shares of Common Stock must be approved by the holders of a majority of the shares of Common Stock voted at the special meeting if a quorum is present. In addition, contemporaneously with the special meeting, the approval of the Series D conversion by the holders of two-thirds of each series of our Preferred Stock will be sought. We do not have advance assurances of approval from the holders of the Common Stock, or from the holders of any of the series of Preferred Stock.

See Information About the Meeting Record Date, Quorum and Required Vote.

What Do I Need To Do Now?

First, read this proxy statement carefully. Then, you should complete, sign and mail your proxy card in the enclosed return envelope as soon as possible. If your shares are held by a broker as nominee, you should receive a proxy card from your broker. That card will contain a control number, and you may use that number to vote [on the Internet at www.proxyvote.com or] by phone by calling the toll-free number _____.

See Information About the Meeting Voting at the Meeting.

May I Change My Vote After I Have Mailed In My Signed Proxy Card Or Otherwise Voted?

Yes. To change your vote you can:

send in a later-dated, signed proxy card or a written revocation before the meeting, or

attend the meeting and give oral notice of your intention to vote in person.

You should be aware that simply attending the meeting will not in and of itself constitute a revocation of your proxy. See [Information About the Meeting](#) [Revocation of Proxies](#).

If My Shares Are Held In Street Name By My Broker, Will My Broker Vote My Shares For Me?

Your broker will vote your shares only if you provide written instructions on how to vote. You should follow the directions provided by your broker regarding how to instruct your broker to vote your shares. See Information About the Meeting.

WHO CAN HELP ANSWER YOUR QUESTIONS?

If you have any questions concerning the issuance of additional shares of Common Stock or the Series D conversion or if you would like additional copies of the proxy statement, please call us at (804) 217-5800. The summary information provided above in question and answer format is for your convenience only and is merely a brief description of material information contained in this proxy statement. **You should carefully read this proxy statement, including the proposed amendment to our articles of incorporation in Appendix A, in its entirety.**

[Dynex Capital logo]

PROXY STATEMENT

INFORMATION ABOUT THE MEETING

This proxy statement is being furnished to holders of the Common Stock of Dynex Capital in connection with the solicitation by its board of directors of proxies to be used at the special meeting of the holders of its Common Stock to be held on _____, 2004 at 10:00 a.m., Eastern Time, at Dynex Capital's corporate offices, located at 4551 Cox Road, Suite 300, Glen Allen, Virginia, and at any adjournments thereof. This proxy statement is first being mailed to stockholders on or about _____, 2004.

Voting at the Meeting

Regardless of the number of shares of Common Stock owned, it is important that stockholders be represented by proxy or present in person at the special meeting. A proxy card is enclosed. Stockholders are requested to vote by completing the proxy card and returning it signed and dated in the enclosed postage-paid envelope. Stockholders are urged to indicate their vote in the spaces provided on the proxy card. Proxies solicited by the board of directors of Dynex Capital will be voted in accordance with directions given in the proxy card. The approval of the proposal to provide for the issuance of additional shares of Common Stock pursuant to the amendment to Dynex Capital's articles of incorporation and the approval of adjournments of the special meeting, if needed, are the only matters presently scheduled to be considered by the stockholders at the special meeting. Where no instructions are indicated, proxies will be voted FOR the proposal and FOR adjournment, if applicable.

The board of directors knows of no additional matters that will be presented for consideration at the special meeting. Execution of a proxy, however, confers on the designated proxy holders discretionary authority to vote the shares in accordance with their best judgment on such other business, if any, that may properly come before the special meeting or any adjournments thereof.

Revocation of Proxies

A proxy may be revoked at any time prior to its exercise by filing written notice of revocation with the Secretary of Dynex Capital, by delivering to Dynex Capital a duly executed proxy bearing a later date, or by attending the special meeting, filing a notice of revocation with the Secretary and voting in person. However, if you are a stockholder whose shares are not registered in your name, you will need additional documentation from the record holder of your shares to vote personally at the meeting.

Solicitation of Proxies

Edgar Filing: DYNEX CAPITAL INC - Form PRE 14A

The cost of solicitation of proxies in the form enclosed will be borne by Dynex Capital. Proxies may also be solicited personally or by telephone, or by directors, officers, and regular employees of Dynex Capital, without additional cost to us. We have retained MacKenzie Partners, Inc. to act as information agent for the special meeting, but MacKenzie Partners will not actively solicit proxies for the

meeting and we will not pay any fees to a third party to assist in the solicitation of proxies. We will also request persons, firms and corporations holding shares in their names, or in the name of their nominees, which are beneficially owned by others, to send proxy material to and obtain proxies from such beneficial owners, and will reimburse such holders for their reasonable expenses in doing so.

Record Date, Quorum and Required Vote

The securities that may be voted at the special meeting consist of shares of Common Stock, with each share entitling its owner to one vote on all matters to be voted on at the meeting.

The close of business on _____, 2004 has been established by the board of directors as the record date for the determination of stockholders entitled to notice of and to vote at the special meeting, and any adjournments thereof. As of the record date, there were _____ shares of Common Stock outstanding.

The presence, in person or by proxy, of at least a majority of the total number of shares of Common Stock entitled to vote is necessary to constitute a quorum at the special meeting. The affirmative vote of the holders of a majority of the shares of Common Stock voted on each action at the meeting will be required to take any action at the special meeting, including the approval of any adjournment. We will treat shares of Common Stock represented by proxies that reflect abstentions as shares that are present and entitled to vote for the purpose of determining the presence of a quorum at the special meeting and for the purpose of determining the outcome of any question submitted to the stockholders for a vote. The inspectors of election will treat broker non-votes (*i.e.*, shares held by brokers that are represented at a meeting but with respect to which the broker does not have discretionary authority to vote) as shares that are present and entitled to vote for purposes of establishing a quorum. For the purposes of determining the outcome of any question as to which the broker has physically indicated on the proxy that it does not have discretionary authority to vote, these shares will be treated as not present and not entitled to vote with respect to that question, even though those shares are considered present for quorum purposes and may be entitled to vote on other questions (although the board of directors knows of no other matter that is expected to be presented at the special meeting). Accordingly, abstentions and broker non-votes will have no effect on the proposal to authorize the issuance of additional shares of Common Stock.

For discussion of the circumstances under which we might seek to adjourn the special meeting in order to solicit additional proxies in favor of the proposal to authorize the issuance of additional shares of Common Stock, see Proposal: Authorization of Issuance of Additional Shares of Common Stock Possible Adjournment of the Meeting.

PROPOSAL:

AUTHORIZATION OF ISSUANCE OF ADDITIONAL SHARES OF COMMON STOCK

Issuance of Shares of Common Stock in the Series D Conversion

In conjunction with the Note Offer, Dynex Capital seeks to restructure its capital structure by amending its articles of incorporation following completion of the Note Offer. The amendment provides for the conversion of 100% of the remaining Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock into a combination of Series D Preferred Stock and shares of Common Stock, plus cash in lieu of fractional shares of Series D Preferred Stock or Common Stock that would result from the conversion (the Series D conversion). Assuming that a minimum of 17.5% of the Series A Preferred Stock, 17.5% of the Series B Preferred Stock and 17.5% of the Series C Preferred Stock is

exchanged for Senior Notes pursuant to the Note Offer, the Preferred Stockholders will receive in the Series D conversion, in exchange for their shares of Preferred Stock, an aggregate of approximately 4.7 million shares of Series D Preferred Stock and 1.08 million shares of Common Stock. In addition, the 4.7 million shares of Series D Preferred Stock that would be issued would be convertible on a one-for-one basis into the same number of shares of Common Stock.

Assuming that a maximum of 70% of the Series A Preferred Stock, 70% of the Series B Preferred Stock and 70% of the Series C Preferred Stock is exchanged for Senior Notes pursuant to the Note Offer, the Preferred Stockholders will receive, in exchange for their shares of Preferred Stock, an aggregate of approximately 1.7 million shares of Series D Preferred Stock and 0.39 million shares of Common Stock. In addition, the 1.7 million shares of Series D Preferred Stock that would be issued would be convertible on a one-for-one basis into the same number of shares of Common Stock.

As of _____, 2004, the directors of Dynex Capital beneficially owned approximately 25.96% of the outstanding shares of Series A Preferred Stock, 27.20% of the outstanding shares of Series B Preferred Stock, and 21.02% of the outstanding shares of Series C Preferred Stock. The number of shares of Series D Preferred Stock and the number of additional shares of Common Stock that will be issued to the directors and their affiliates in the Series D conversion will depend on the number of shares tendered to, and accepted by, Dynex Capital in the Note Offer.

In accordance with requirements of the New York Stock Exchange, the issuance of additional shares of Common Stock pursuant to the Series D conversion and potential future conversions of the Series D Preferred Stock requires the approval of the holders of a majority of the shares of Common Stock voted at a meeting of Common Stockholders at which a quorum is present.

If either the proposal to authorize the issuance of additional shares of Common Stock pursuant to the Series D conversion and potential future conversions of the Series D Preferred Stock or the Series D conversion itself is not approved, then neither the Note Offer nor the Series D conversion (together, the recapitalization), as currently proposed, will be implemented.

Basis of the Series D Conversion

The conversion ratio for the Series D conversion is: (a) 2.784 shares of Series D Preferred Stock and .6373 shares of Common Stock for each outstanding share of Series A Preferred Stock, plus cash in lieu of fractional shares, (b) 2.842 shares of Series D Preferred Stock and .6506 shares of Common Stock for each outstanding share of Series B Preferred Stock, plus cash in lieu of fractional shares, and (c) 3.48 shares of Series D Preferred Stock and .7967 shares of Common Stock for each outstanding share of Series C Preferred Stock, plus cash in lieu of fractional shares. The conversion ratios were established based on valuing each share of Preferred Stock at 116% of its original issue price and the Series D Preferred Stock at an issue price of \$10.00 per share, which is the per share liquidation preference of the Series D Preferred Stock.

The conversion ratio for the Common Stock portion of the Series D conversion was based on 15% of the original issue price of each share of Preferred Stock and the average closing price of the Common Stock of \$5.6484 as traded on the New York Stock Exchange for the fifty trading days prior to the announcement of the Series D conversion on January 8, 2004.

