

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

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

DYNEX CAPITAL, INC.

(Exact name of registrant as specified in its charter)

Virginia

(State or other jurisdiction of
incorporation or organization)

52-1549373

(I.R.S. Employer
Identification No.)

4991 Lake Brook Drive, Suite 100

Glen Allen, VA

(Address of Principal Executive Offices)

23060

(Zip Code)

DYNEX CAPITAL, INC. 2004 STOCK INCENTIVE PLAN

(Full title of the plan)

Stephen J. Benedetti

4991 Lake Brook Drive

Suite 100

Glen Allen, VA 23060

(804) 217-5800

(Name, address and telephone number, including area code, of agent for service)

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 ☐

Non-accelerated filer ☐

(Do not check if a smaller reporting company)

Accelerated filer ☐

Smaller reporting company ☐

The Commission is requested to mail signed copies of all orders, notices and communications to:

James J. Wheaton, Esq.
Troutman Sanders LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, VA 23462
Telephone: (757) 687-7719
Facsimile: (757) 687-1501

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered ²	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock ¹	110,000 shares	\$8.55 ³	\$940,500.00 ³	\$52.48

¹ Common Stock, \$0.01 par value, offered by Dynex Capital, Inc. (the “Company”) pursuant to outstanding options granted under the Dynex Capital, Inc. 2004 Stock Incentive Plan (the “Plan”). In connection with the approval on May 13, 2009 by the Company’s shareholders of the Dynex Capital, Inc. 2009 Stock and Incentive Plan, no additional awards will be granted under the Plan.

² Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement also covers an indeterminate number of additional shares that may be offered and issued to prevent dilution resulting from stock splits, stock dividends or similar transactions as provided in the Plan.

³ Pursuant to Rule 457(h) under the Securities Act, the proposed maximum offering price and proposed maximum aggregate offering price of shares subject to outstanding options are estimated solely for the purpose of calculating the registration fee and are based on the weighted average exercise price of options granted under the Plan outstanding as of the date of the filing of this registration statement.

Part I — Information Required in the Section 10(a) Prospectus

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* The information required by Part I to be contained in the Section 10(a) prospectus is omitted from this registration statement in accordance with the Note to Part I of Form S-8 and Rule 428.

Part II — Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference.

The Company hereby incorporates by reference into this registration statement the following documents:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the Securities and Exchange Commission (the "Commission") on March 16, 2009, and Amendment No. 1 to the Company's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2008, filed with the Commission on March 31, 2009;
- (b) The Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2009, filed with the Commission on May 11, 2009;
- (c) The Company's Current Report on Form 8-K, filed with the Commission on April 3, 2009, the Company's Current Report on Form 8-K, filed with the Commission on May 15, 2009 (the "May 15 Current Report"), and Amendment No. 1 to the May 15 Current Report filed with the Commission on May 15, 2009; and
- (d) The description of the Company's capital stock contained in the Registration Statement on Form 8-A, filed pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") on January 17, 1989, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Company subsequent to the date of this registration statement pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act and prior to the filing of a post-effective amendment hereto which either indicates that all securities offered hereby have been sold or deregisters all such securities then remaining unsold, shall also be deemed to be incorporated by reference into this registration statement and to be a part hereof from their respective dates of filing. Any statement in this registration statement, or in a document incorporated or deemed incorporated herein, shall be deemed to be modified or superseded to the extent that a statement contained in a subsequently filed document which is, or is deemed to be, incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Virginia Stock Corporation Act and the Company's articles of incorporation provide for indemnification of the Company's directors and officers in a variety of circumstances, which may include liabilities under the Securities Act. The Company's articles of incorporation require indemnification of directors and officers with respect to certain liabilities, expenses, and other amounts imposed on them by reason of having been a director or officer, except in the case of willful misconduct or a knowing violation of criminal law. The Company also carries insurance on behalf of directors, officers, employees or agents which may cover liabilities under the Securities Act.

Under the Virginia Stock Corporation Act, a Virginia corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, the Virginia Stock Corporation Act permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of:

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

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

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

An Exhibit Index appears at page 7 hereof.

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;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in the volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, 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 the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act 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 Glen Allen, Commonwealth of Virginia, on May 21, 2009.

Dynex Capital, Inc.
(Registrant)

By: /s/ Stephen J. Benedetti
Stephen J. Benedetti
Executive Vice President, Chief Operating
Officer and Chief Financial Officer

POWERS OF ATTORNEY AND SIGNATURES

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Thomas B. Akin and Stephen J. Benedetti, and each of them, with full power of substitution, as his attorneys-in-fact and agents for him and in his name and on his behalf as a director and/or officer of Dynex Capital, Inc. to prepare, execute and file any and all amendments, including post-effective amendments, or supplements to this registration statement on Form S-8, including any amendment to this registration statement for the purpose of registering additional shares in accordance with General Instruction E to Form S-8, and other documents (including any necessary amendments thereof) which such attorneys-in-fact may deem appropriate or necessary and to cause the same to be filed with the Commission.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Thomas B. Akin</u> Thomas B. Akin	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	May 21, 2009
<u>/s/ Stephen J. Benedetti</u> Stephen J. Benedetti	Executive Vice President, Chief Operating Officer and Chief Financial Officer (Principal Financial Officer)	May 21, 2009

/s/ Jeffrey L. Childress
Jeffrey L. Childress

Vice President and Controller
(Principal Accounting Officer)

May 21, 2009

/s/ Leon A. Felman
Leon A. Felman

Director

May 14, 2009

/s/ Barry Igdaloff
Barry Igdaloff

Director

May 14, 2009

/s/ Daniel K. Osborne
Daniel K. Osborne

Director

May 14, 2009

/s/ James C. Wheat, III
James C. Wheat, III

Director

May 14, 2009

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.1	Dynex Capital, Inc. 2004 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Form 10-K for the fiscal year ended December 31, 2004 filed on April 14, 2005).
4.1.1	409A Amendment to Dynex Capital, Inc. 2004 Stock Incentive Plan, dated December 31, 2008 (incorporated by reference to Exhibit 10.1.1 to the Company's Form 10-K for the fiscal year ended December 31, 2008 filed on March 16, 2009).
5.1	Opinion of Troutman Sanders LLP with respect to the validity of the Common Stock, filed herewith.
23.1	Consent of Troutman Sanders LLP (contained in Exhibit 5 hereto).
23.2	Consent of BDO Seidman, LLP, filed herewith.
24.1	Powers of Attorney (included on the signature page of this registration statement).

TROUTMAN SANDERS

TROUTMAN SANDERS LLP
Attorneys at Law
222 Central Park Avenue, Suite 2000
Virginia Beach, Virginia 23462
757.687.7500 telephone
757.687.7510 facsimile
troutmansanders.com

May 21, 2009

The Board of Directors
Dynex Capital, Inc.
4991 Lake Brook Drive, Suite 100
Glen Allen, Virginia 23060

Registration Statement on Form S-8

Members of the Board:

We have acted as counsel to Dynex Capital, Inc., a Virginia corporation (the "Company"), in connection with the preparation of a registration statement on Form S-8 (the "Registration Statement") with respect to the registration with the Securities and Exchange Commission under the Securities Act of 1933, as amended, of 110,000 shares of the Company's Common Stock, \$0.01 par value (the "Shares"), reserved for issuance in connection with the Dynex Capital, Inc. 2004 Stock Incentive Plan (the "Plan"). The Plan and the issuance of the Shares pursuant to the Plan were approved by the Board of Directors of the Company by resolutions adopted June 8, 2004, subject to approval of the Plan by the shareholders of the Company. The Plan was approved by the shareholders of the Company at the annual meeting of the Company's shareholders held on July 20, 2004.

As counsel to the Company, we have examined the Company's Articles of Incorporation, as amended through the date hereof, and its Bylaws, as amended through the date hereof, the Registration Statement, the Plan, and the resolutions adopted by the Board of Directors of the Company on June 8, 2004 and May 14, 2009 with respect to the Plan and the Registration Statement, and have made such other investigations as we have deemed necessary for purposes of this opinion. In such examinations, we have assumed the genuineness of all signatures on all original documents, the authenticity of all documents submitted to us as originals, the conformity to original documents of all copies submitted to us, the authenticity of the originals of documents submitted to us as copies and the due execution and delivery of all documents where due execution and delivery are prerequisite to the effectiveness thereof.

**TROUTMAN
SANDERS**

The Board of Directors
Dynex Capital, Inc.
May 21, 2009
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As to questions of fact material to this opinion, we have relied solely upon statements of officers of the Company. We have assumed and relied upon the accuracy and completeness of such statements, and nothing has come to our attention leading us to question the accuracy of the stated matters. We have made no independent investigation with regard thereto and, accordingly, we do not express any view or belief as to matters that might have been discovered by independent verification.

Based upon and subject to the foregoing, we are of the opinion that the Shares reserved for issuance in accordance with the Plan have been duly authorized and will, when and to the extent issued in accordance with the Plan, be validly issued, fully paid and nonassessable.

In expressing the opinions set forth above, we are not passing on the laws of any jurisdiction other than the laws of the Commonwealth of Virginia.

This opinion is limited to the matters expressly opined on herein, and no opinion may be implied or inferred beyond those expressly stated. This opinion is rendered as of the date hereof, and we make no undertaking and expressly disclaim any duty to supplement or update such opinion, if, after the date hereof, facts or circumstances come to our attention or changes in the law occur which could affect such opinion. This opinion is being furnished to you solely for your benefit in connection with the transactions contemplated by the Plan and, except as expressly set forth below, is not to be used, circulated, quoted or otherwise referred to for any other purpose without our prior express written consent and may not be relied upon by any other person without our express written consent.

We hereby consent to the filing of this opinion or copies thereof as an exhibit to the Registration Statement.

Very truly yours,

/s/ Troutman Sanders LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8, relating to the Dynex Capital, Inc. 2004 Stock Incentive Plan, of our reports dated March 13, 2009, relating to the consolidated financial statements and the effectiveness of Dynex Capital, Inc.'s internal control over financial reporting, appearing in Company's Annual Report on Form 10-K for the year ended December 31, 2008.

/s/ BDO SEIDMAN, LLP

Richmond, Virginia
May 21, 2009