

**COURT FILE NO.** 1701-04209

**COURT** COURT OF KING'S BENCH OF ALBERTA

**JUDICIAL CENTRE** CALGARY

**PLAINTIFF** AXCESS CAPITAL ADVISORS INC.



C100165

**DEFENDANTS (RESPONDENTS)** DMD MORTGAGE INVESTMENT CORPORATION,  
DMD II MORTGAGE INVESTMENT CORPORATION  
and DMD III MORTGAGE INVESTMENT CORPORATION

**DOCUMENT** FIRST AND FINAL REPORT OF MNP LTD IN ITS CAPACITY AS THE COURT APPOINTED RECEIVER AND MANAGER OF DMD MORTGAGE INVESTMENT CORPORATION

**FILED** October 2, 2023

**ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT**

**Counsel**

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**Attention: Kyle Kashuba**

**Receiver**

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**Attention: Victor P. Kroeger / Rick Anderson**

## APPENDICES

### APPENDIX A

### Receiver's Final Statement of Receipts and Disbursements

## INTRODUCTION AND BACKGROUND

1. MNP Ltd. was appointed as receiver and manager (the “**Receiver**”) of the assets, undertakings, and property of DMD Mortgage Investment Corporation (“**DMD**” or the “**Company**”), by an Order granted by the Court of Queen’s Bench of Alberta, now, Court of King’s Bench of Alberta, (the “**Court**”) on April 4, 2017 (the “**Receivership Order**”).
2. DMD was formed in 1992 and was a mortgage investment corporation operating in Alberta.
3. DMD, DMD II Mortgage Investment Corporation (“**DMD II**”), DMD III Mortgage Investment Corporation (“**DMD III**”) and Sun Country Mortgage Investment Corporation (“**Sun Country**”) were entities controlled and operated by the same individuals and funds were regularly moved between these related parties. DMD II and DMD III were also placed into receivership on April 4, 2017. Sun Country went into bankruptcy on February 15, 2017.
4. This is the Receiver’s first and final report to the Court (the “**First Report**”). Capitalized terms not defined in the First Report are as defined in the Receivership Order.
5. All references to currency are in Canadian dollars unless otherwise stated.

## NOTICE TO READER

6. In preparing the First Report and making comments herein, the Receiver has relied upon certain unaudited, draft, or internal financial information, including DMD’s books and records, and information from other third-party sources (collectively, the “**Information**”). The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards or other standards established by the Chartered Professional Accountants of Canada (the “**Standards**”). Additionally, none of the Receiver’s procedures were intended to disclose defalcations or other irregularities. If the Receiver were to perform additional procedures or to undertake an audit examination of the Information in accordance with the Standards, additional matters may come to the Receiver’s attention. Accordingly, the Receiver does not express an opinion, nor does it provide any other form of assurance on the financial or other information presented herein.

The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of the Second Report.

7. The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the use of the First Report. Any use which any party makes of the First Report or any reliance or decision to be made based on the First Report is the sole responsibility of such party.
8. Copies of the relevant documents relating to these proceedings are available on the Receiver's website at [www.mnpdebt.ca/dmd](http://www.mnpdebt.ca/dmd).

## PURPOSE OF THE REPORT

9. The purpose of the First Report is to provide this Honourable Court with information in respect of the activities of the Receiver and to seek an order granting the following relief:
  - a. approving the reported actions of the Receiver in administering these receivership proceedings;
  - b. approving the Receiver's Final Statement of Receipts and Disbursements for the period April 4, 2017, to September 30, 2023;
  - c. approving the professional fees and disbursements of the Receiver;
  - d. approving the destruction of the DMD books and records;
  - e. approving the professional fees and disbursements of the Receiver's legal counsel, Torys LLP ("**Torys**"); and
  - f. discharging the Receiver over the Property of DMD.

## RECEIVER'S ACTIVITIES

10. Since the Receiver's appointment, the Receiver has undertaken activities including, but not limited to, the following:
  - a. Prepared and issued the Receiver's Notice and Statement of Receiver pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**");
  - b. Prepared interim reports, as required, pursuant to Section 246(2) of the BIA;
  - c. Maintained the Receiver's website;

- d. Engaged Axxess Capital Advisors Inc. (“**Axxess**”), the Company’s former Independent Fund Manager, to assist the Receiver with property maintenance and sale;
- e. Engaged and consulted with Torys to assist with the administration of the receivership proceedings;
- f. Attended the Court of Appeal of Alberta on behalf of the DMD creditors to obtain the Court’s determination regarding property claims submitted by Crossroads DMD Mortgage Investment Corporation (“**Crossroads**”), a related entity, as against the Property;
- g. Obtained a legal opinion that the secured claim (described below) was valid and enforceable and released the Property to the secured creditor;
- h. Evaluated the appraisal for 86 Marbrooke Circle NE Calgary, AB (the “**Marbrooke Property**”) received from Axxess and resolved the secured claim of Laurentian Bank and the property claim filed with the Receiver by Crossroads (described below);
- i. Prepared the Receiver’s First Report and is attending the Receiver’s discharge application; and
- j. Completed the administration of the receivership proceedings aside from the Receiver’s final report in accordance with Section 246(3) of the BIA.

## CREDITORS

11. Schedule I below shows the amounts owed by DMD as at the date of receivership proceedings:

<b>Secured Creditors</b>	<b>Amounts Owed</b>
Laurentian Bank	\$77,925.71
Crossroads	\$162,015.58

<b>Unsecured Creditors</b>	\$5,973,512.73
<b>Total</b>	<b>\$6,213,454.02</b>

## ASSETS

12. On the date of the receivership proceedings, DMD had a 50% ownership interest in the Marbrooke Property, with Sun Country having the other 50% ownership interest. Crossroads and Laurentian Bank were on the Certificate of Title to the Marbrooke Property as mortgagees.
13. Laurentian Bank submitted a secured claim for its first mortgage of \$147,237.76, and Crossroads submitted a secured claim for its second mortgage and property claim for \$184,984.77.
14. The Receiver was in possession of an April 25, 2017 appraisal on the Marbrooke Property that was conducted by Cornerstone Appraisals Inc. The Marbrooke Property was appraised at fair market value at \$315,000, ultimately selling at \$300,000. Relying on the appraisal report and Torys' legal opinion, the Receiver released its interest in the Marbrooke Property to Crossroads on December 21, 2017. We understand that the Marbrooke Property was subsequently sold.
15. Legal counsel for Crossroads provided a statement of adjustments confirming that there were no funds available to the Receiver after payment of the two secured mortgagees and the Crossroads property claim.
16. The Receiver remained in place due to a Court application made in proceedings involving a related party, as there were potential payments made to Crossroads that may have been subject to challenge pursuant amounts claimed by Crossroads that may have been statute barred pursuant to the Limitations Act of Alberta. Based on the Court of Appeal decision made in that matter, the matter was resolved in Crossroads' favour and therefore there was nothing remaining for the Receiver to challenge.

## CROSSROADS PROPERTY CLAIMS

17. Crossroads submitted six (6) secured claims and four (4) property claims (the "**Crossroads Claims**") on various properties held by DMD II and Sun Country. Both entities were controlled and operated by the same individuals and funds were regularly moved between these related parties. The Receiver was aware that properties that closed

prior to the receivership proceedings of DMD may be impacted by the resulting decision relating to these property claims.

18. MNP Ltd. in its capacity as Receiver of DMD II disallowed the Crossroads Claims on July 2, 2017. Crossroads made an application to the Court to overturn the Receiver's disallowance. That application was heard on July 4, 2018.
19. The Court upheld the Receiver's disallowance and provided its written decision on September 20, 2019. Crossroads then appealed the decision. The Court of Appeal agreed with Crossroads on December 16, 2021, and found that the Crossroads Claims were valid. As a result, the Receiver released the funds held in trust to Crossroads to satisfy the secured and property claims filed against the various properties.
20. As a result of the Court of Appeal decision, the pre-receivership sales were, therefore, not impacted.

## **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

21. The Receiver's Final Statement of Receipts and Disbursements for the period from April 4, 2017, to September 30, 2023 (the "**Receiver's Final R&D**") is attached as Appendix "**A**".
22. The Receiver's Final R&D shows payments for the fees of the Receiver and Torys, consulting fees, and other fees associated with the administration of the estate, totaling \$143,433.48. It further sets out receipts that include cash on hand and interest generated thereof, totaling \$148,627.98.
23. All funds remaining in the receivership estate have been accrued to pay the final obligations of the receivership, such as destruction of records and estimates to complete.

## **APPROVAL OF ACCOUNTS**

24. The Receiver's Final R&D includes a summary of professional fees paid by the Receiver. Copies of the underlying invoices with respect to the fees and disbursements of the Receiver will be made available to the Court at the hearing, if required.
25. For the period of April 4, 2017, to August 31, 2023, the Receiver expended a total of 147.4 hours with respect to the administration of the receivership proceedings and its

professional fees and disbursements, excluding GST, for this same period total \$48,515.45.

26. For the period of March 1, 2017, to August 31, 2023, Torys has expended a total of 221.1 hours with respect to the administration of the receivership proceedings and its professional fees and disbursements, excluding GST, for this same period total \$61,550.17. The Receiver has reviewed Torys' fees and is of the view that the fees are reasonable and appropriate in the circumstances. Invoices from Torys were allocated between DMD and its related entities DMD II and DMD III. The costs were split as the work undertaken had a direct impact on all three (3) debtor companies and could not be readily distinguishable between the separate receivership estates. The fees reported above are the equal share of time and expenses for DMD.
27. Final invoices will be rendered by the Receiver and Torys that will include any unbilled work in progress, the fees and disbursements pertaining to this application, and the wind up of the administration of the receivership proceedings.
28. Torys has further advised of an estimated \$2,500 to \$3,000 for professional fees and disbursements, excluding GST, to attend the discharge application to complete the receivership proceedings.
29. In accordance with paragraph 17 of the Receivership Order, the Professional Fees have been charged by the Receiver and Torys at their standard hourly rates and, in the Receiver's experience, are comparable to the standard rates of other providers of similar services in Alberta. The Receiver will make copies of both its accounts and the accounts of Torys (subject to redaction for privilege) available to this Honourable Court or any interested person upon further request.

## **DISCHARGE OF THE RECEIVER**

30. The Receiver, based on legal advice from Torys, released its interest in the Marbrooke Property to Crossroads.
31. DMD has no further properties.



32. The Receiver has contacted the officers and directors of the debtor and Access and both parties have advised the Receiver that they do not want the books and records of DMD returned to them. As such, the Receiver is seeking approval to destroy the Records.
33. The Receiver has completed the majority of its administrative obligations, other than filing final GST returns and the Receiver's 246(3) report. Therefore, the Receiver wishes to be discharged as Receiver. Once the remaining administrative tasks have been completed, the Receiver will file the Receiver's Affidavit Confirming Discharge of Receiver.

## **CONCLUSION AND RECOMMENDATION**

34. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court issue an Order:
- a. approving the reported actions of the Receiver in administering these receivership proceedings provided that only the Receiver, in its personal capacity and with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.
  - b. approving the Receiver's Final R&D for the period April 4, 2017, to September 30, 2023;
  - c. approving the fees and disbursements of the Receiver totaling \$48,515.45;
  - d. approving the fees and disbursements of the Torys totaling \$58,175.17;
  - e. approving the destruction of the DMD books and records; and
  - f. discharging the Receiver.

All of which is respectfully submitted this 2<sup>nd</sup> day of October, 2023.

MNP Ltd.

in its capacity as Court-appointed Receiver and  
Manager of DMD Mortgage Investment Corporation  
and not in its personal capacity.

Per:   
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Victor P. Kroeger, CIRP, LIT, CPA, CA, CFE  
Senior Vice President

# APPENDIX A

**DMD MORTGAGE INVESTMENT CORPORATION  
IN RECEIVERSHIP  
STATEMENT OF RECEIPTS AND DISBURSEMENTS  
FOR THE PERIOD APRIL 4, 2017 to SEPTEMBER 30, 2023**

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**RECEIPTS**

Cash on hand	\$ 146,359.89
Interest earned	2,268.09

**TOTAL RECEIPTS** \$ 148,627.98

**DISBURSEMENTS**

Filing Fees	\$ 70.00
Insurance	888.20
Storage Fees	2,450.00
Utilities	662.40
Repairs and Maintenance	1,296.45
Consulting fees	21,892.50
Receiver's Fees	48,515.45
Legal Fees	61,550.17
GST Paid	9,652.81
Destruction of Records	1,650.00

**TOTAL DISBURSEMENTS** \$ 148,627.98

**EXCESS RECEIPTS OVER DISBURSEMENTS** \$ -