

What does a forfeiture clause usually look like?

PROVIDED ALWAYS AND IT IS HEREBY AGREED that if the said rent or any part thereof shall be unpaid for twenty-one days after any of the days hereinbefore appointed for payment thereof whether the same shall have been lawfully demanded or not or if the Tenant while the demised premises or any part thereof remain vested in it shall be wound up compulsorily or voluntarily (except for reconstruction or amalgamation) or shall become bankrupt or make any assignment for the benefit of his creditors or make any arrangement with his creditors for the liquidation of his debts by composition or otherwise or if any covenant on the Tenant's part herein contained shall not be performed or observed then and in any of the said cases it shall be lawful for the Landlord or any person or persons duly authorised by the Landlord in that behalf into or upon the demised premises or any part thereof in the name of the whole to re-enter and the same to repossess and enjoy without prejudice to any right or remedy of the Landlord in respect of any antecedent breach of any of the covenants by the Tenant herein contained

The '6' Questions:



- **Surveyor / Solicitor role**

Can a Landlord forfeit a lease?

1. Can a Landlord forfeit a lease?

- Breach of any covenant with a lease containing proviso for re-entry for breach of such covenant
- Breach of condition – fundamental term
- Commercial / Residential

Waiver

- Landlord elects to treat the lease as continuing
 - Actual / imputed knowledge
 - Intention
 - Communication to tenant
-

Examples

- Recognition of continuance of the lease
 - Accepting new rent
 - Demanding new rent
 - Use of CRAR procedure
 - Serving a break notice
 - Serving other notices under the lease
 - Granting licence to assign or sublet the lease
 - Continuing or Once and for all
 - Continuing breach (user, repair)
 - Once and for all breach (assignment, insure, alterations)
 - After right accrues
-

How does a Landlord forfeit a lease?

2. How does a Landlord forfeit a lease?

Notice + Process

- Need for Section 146 (of Law of Property Act 1925) Notice

No – Rent:

- Express grace period
- Sums reserved as rent

Yes – any other breach of covenant

Section 146 Notice

- Form – specify breach + remedy + compensation
- Service
- Length – remediability / irremediability
- Repairs – Leasehold Property (Repairs) Act 1938

Forfeiture in Commercial Property



Leasehold Property (Repairs) Act 1938

- Lease granted for a term of 7 years or more
- 3 years or more remains unexpired
- Prescribed wording + right for tenant to serve counter notice
- If applicable court only grant leave to forfeit if:
 - breach requires remedy to prevent substantial diminution
 - immediate remedy to comply with statute
 - immediate remedy required for benefit of other occupants
 - much cheaper to remedy now than later
 - other special circumstances exist

Forfeiture in Commercial Property



Legal Process

Service of Claim Form

Twilight Period

Court Enforcement

Peaceable Re-entry

- Possible:
 - Without violence (to persons or property)
 - Section 6 of Criminal Law Act 1977
- How:
 - Change locks / block access to open land

Legal Process v Peaceable Re-entry – what's best?

Peaceable re-entry

Pros	Cons
• Quick	• Criminal Offence if opposed by someone occupying but continue
• No court proceedings needed	• More risk of wrongful / unlawful forfeiture
• Lower initial costs	
• Positive step by Landlord	

Legal Process v Peaceable Re-entry – what's best?**Court Proceedings**

Pros	Cons
• Formal + certainty	• Time
• No risk of unlawful forfeiture	• Cost
• Occupational payment continues until possession	

What can a tenant do to counter forfeiture?**3. What can a tenant do to counter forfeiture?****Relief**

- Rent
- Other covenants:
 - Court application
 - Timing (receipt of Section 146 Notice – 6 months after forfeiture)
 - Factors considered
 - Terms
 - Effect

What can other interested parties do to counter forfeiture?
4. What can other interested parties do to counter forfeiture?
Subtenants**Mortgagees**

- Rent
- Other covenants
 - Effect

What are the consequences (legal and practical) of forfeiting a lease and regaining possession?
5. What are the consequences (legal and practical) of forfeiting a lease and regaining possession?

- Premises back
 - Original Tenant / Guarantors
 - Insurance / business rates / services/ repairs/ new tenant
 - Dilapidations
- Tenants Chattels
 - Torts (Interference with Goods) Act 1977
- Tenants fixtures

6. Is forfeiture worthwhile / an outdated remedy??

Worthwhile?

The future



www.burgess-salmon.com

This presentation gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.
© Burgess Salmon 2018

**Burges
Salmon**

Colour palette

100%	R: 223 G: 25 B: 149	R: 124 G: 135 B: 142	R: 239 G: 51 B: 64	R: 255 G: 130 B: 0	R: 242 G: 169 B: 0	R: 88 G: 44 B: 131	R: 0 G: 156 B: 166	R: 100 G: 167 B: 11	R: 0 G: 163 B: 224
40%	R: 244 G: 160 B: 213	R: 202 G: 206 B: 209	R: 249 G: 173 B: 179	R: 255 G: 205 B: 153	R: 255 G: 223 B: 148	R: 188 G: 155 B: 221	R: 117 G: 246 B: 255	R: 196 G: 246 B: 130	R: 140 G: 223 B: 255
20%	R: 249 G: 207 B: 234	R: 229 G: 231 B: 232	R: 252 G: 214 B: 217	R: 255 G: 230 B: 204	R: 255 G: 239 B: 201	R: 222 G: 205 B: 238	R: 486 G: 250 B: 255	R: 225 G: 250 B: 192	R: 197 G: 239 B: 255

Forfeiture in Commercial Property

**Burges
Salmon**

Main Title or section heading

Heading Text

Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text

Pink 100%

Pink 40%

Pink 20%

Purple 100%

Purple 40%

Purple 20%

Forfeiture in Commercial Property

Main Title or section heading

Burges Salmon

Heading Text

Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text

Orange 100%	Purple 100%
Orange 40%	Purple 40%
Orange 20%	Purple 20%

Forfeiture in Commercial Property

Main Title or section heading

Burges Salmon


Heading Text

Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text

Grey 100%	Teal 100%
Grey 40%	Teal 40%
Grey 20%	Teal 20%

Forfeiture in Commercial Property




Main Title or section heading

Subheading/article heading

Title	Title	Title	Title
<ul style="list-style-type: none">• Bullet• Bullet• Bullet	<ul style="list-style-type: none">• Bullet• Bullet• Bullet	<ul style="list-style-type: none">• Bullet• Bullet• Bullet	<ul style="list-style-type: none">• Bullet• Bullet• Bullet

Forfeiture in Commercial Property



Main Title or section heading

Heading Text

Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text

text	Text
text	Text

Forfeiture in Commercial Property


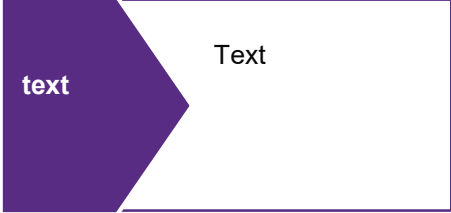
Burges Salmon

Main Title or section heading

Heading Text

Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text



Forfeiture in Commercial Property

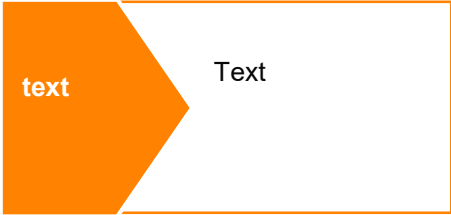
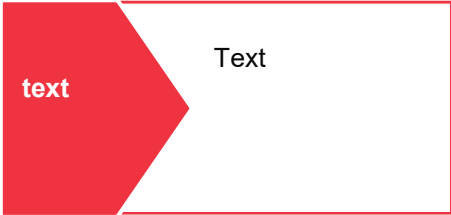
Burges Salmon

Main Title or section heading

Heading Text

Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text



Forfeiture in Commercial Property

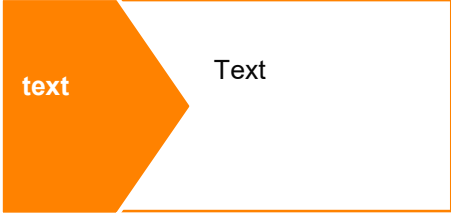
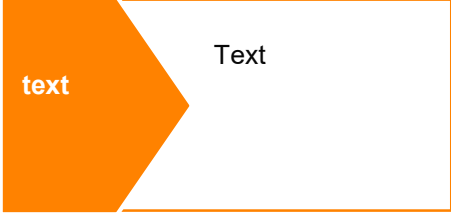
Burges Salmon

Main Title or section heading

Heading Text

Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text



Forfeiture in Commercial Property

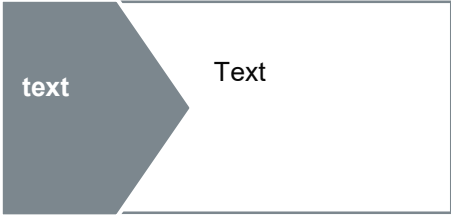
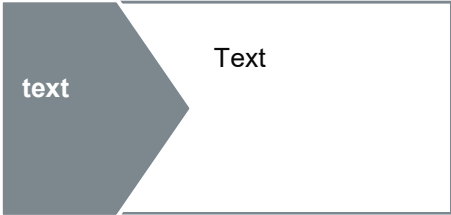
Burges Salmon

Main Title or section heading

Heading Text


Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text



Forfeiture in Commercial Property

Main Title or section heading



Text


Text

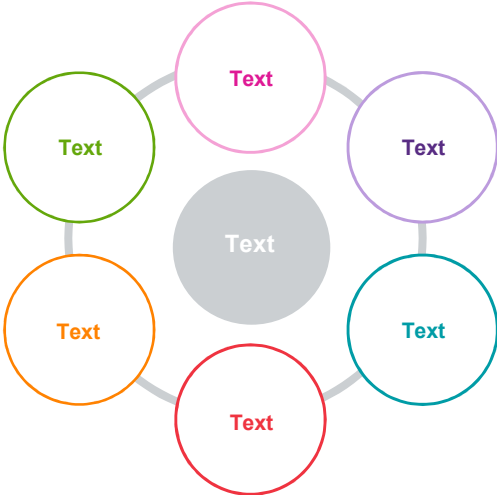
Text

Text

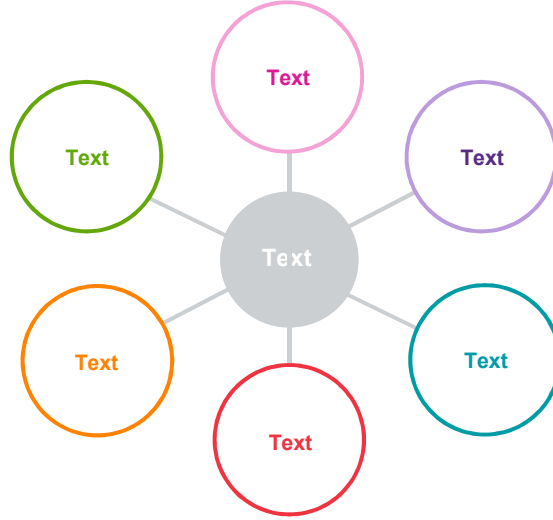
Forfeiture in Commercial Property

Main Title or section heading

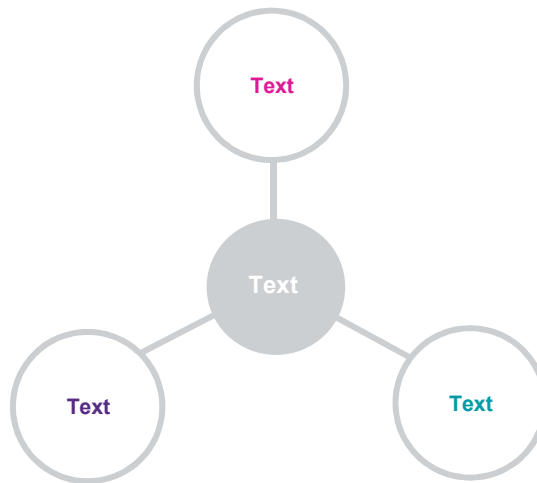




Main Title or section heading



Main Title or section heading



Programme

- **Shelley Crofts** – senior associate
 - Holiday pay and working time update
 - Discrimination and whistleblowing
- **Natalie Jeffries** – associate
 - The disciplinary process – *key cases from 2015*
 - Redundancy – *key cases from 2015*
- **Roger Bull** – partner
 - TUPE update
 - On the horizon

Main title or section heading

Heading Text

Intro Text


- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text

Heading Text

Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text

Forfeiture in Commercial Property



Main title or section heading

Heading Text

Intro Text


- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text

Heading Text

Intro Text

- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text
- First Bullet Text
 - Second Bullet Text
 - Third Bullet Text

Forfeiture in Commercial Property








Main Title or section heading

Heading	Heading	Heading
Text	Text	Text
Text	Text	Text
Text	Text	Text
Text	Text	Text
Text	Text	Text
Text	Text	Text

Forfeiture in Commercial Property


Main Title or section heading







<p>Nick Graves, Corporate, Partner</p>  <p>M +44 (0) 7779 133 680 T +44 (0) 117 939 2200 E nick.graves@borges-salmon.com</p>	<p>Nick Graves, Corporate, Partner</p>  <p>M +44 (0) 7779 133 680 T +44 (0) 117 939 2200 E nick.graves@borges-salmon.com</p>
<p>Nick Graves, Corporate, Partner</p>  <p>M +44 (0) 7779 133 680 T +44 (0) 117 939 2200 E nick.graves@borges-salmon.com</p>	<p>Nick Graves, Corporate, Partner</p>  <p>M +44 (0) 7779 133 680 T +44 (0) 117 939 2200 E nick.graves@borges-salmon.com</p>

Forfeiture in Commercial Property

Main Title or section heading



<p>Nick Graves Corporate, Partner</p>  <p>M +44 (0) 7779 133 680 T +44 (0) 117 939 2200 E nick.graves@borges-salmon.com</p>	<p>Nick Graves Corporate, Partner</p>  <p>M +44 (0) 7779 133 680 T +44 (0) 117 939 2200 E nick.graves@borges-salmon.com</p>
<p>Nick Graves Corporate, Partner</p>  <p>M +44 (0) 7779 133 680 T +44 (0) 117 939 2200 E nick.graves@borges-salmon.com</p>	<p>Nick Graves Corporate, Partner</p>  <p>M +44 (0) 7779 133 680 T +44 (0) 117 939 2200 E nick.graves@borges-salmon.com</p>

Forfeiture in Commercial Property



Main Title or section heading



Nick Graves
Corporate, Partner
M +44 (0) 7779 133 680
T +44 (0) 117 939 2200
E nick.graves@burgess-salmon.com

Text

- First bullet text
- First bullet text
- First bullet text
- First bullet text
- First bullet text



Nick Graves
Corporate, Partner
M +44 (0) 7779 133 680
T +44 (0) 117 939 2200
E nick.graves@burgess-salmon.com

Text

- First bullet text
 - First bullet text
 - First bullet text
 - First bullet text
 - First bullet text
-