

The practical effect of splitting the deed of trust from the promissory note is to make it impossible for the holder of the note to foreclose, unless the holder of the deed of trust is the agent of the holder of the note. Without the agency relationship, the person holding only the note lacks the power to foreclose in the event of default. The person holding only the deed of trust will never experience default because only the holder of the note is entitled to payment of the underlying obligation. The mortgage loan becomes ineffectual when the note holder did not also hold the deed of trust.” *Bellistri v. Ocwen Loan Servicing, LLC*, [284 S.W.3d 619](#), 623 (Mo. App. 2009).

Some courts have found that, because [MERS](#) is not the original holder of the promissory note and because there is no evidence that the original holder of the note authorized MERS to transfer the note, the language of the assignment purporting to transfer the promissory note is ineffective. “MERS never held the promissory note, thus its assignment of the deed of trust to Ocwen separate from the note had no force.” *284 S.W.3d at 624*; see also *In re Wilhelm*, 407 B.R. 392 (Bankr. D. Idaho 2009) (standard mortgage note language does not expressly or implicitly authorize MERS to transfer the note); *In re Vargas*, 396 B.R. 511, 517 (Bankr. [C.D. Cal. 2008](#)) (“[I]f FHM has transferred the note, MERS is no longer an authorized agent of the holder unless it has a separate agency contract with the new undisclosed principal. MERS presents no evidence as to who owns the note, or of any authorization to act on behalf of the present owner.”); *Saxon Mortgage Services, Inc. v. Hillery*, 2008 U.S. Dist. LEXIS 100056, 2008 WL 5170180 (N.D. Cal. 2008) (unpublished opinion) (“[F]or there to be a valid assignment, there must be more than just assignment of the deed alone; the note must also be assigned. . . . MERS purportedly assigned both the deed of trust and the promissory note. . . . However, there is no evidence of record that establishes that MERS either held the promissory note or was given the authority . . . to assign the note.”).