

Decentralized Autonomous Organization Laws Across the U.S.

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Blockchain technology is a buzzword that has been used by companies for years. In general, blockchain is a decentralized digital ledger used to record and validate transactions. Historically, the focus has primarily been on how blockchain technology may be utilized as a tool to promote businesses; however, the focus has evolved to how blockchain may empower individual users to work toward a common goal in a decentralized manner. In the last few years, blockchain has been used to collate individuals to purchase basketball teams, golf courses, or even bid on a rare copy of the [U.S. Constitution](#).

A collection of individuals using blockchain technologies to work toward a common goal is typically done via a Decentralized Autonomous Organization (DAO). In the simplest example, a DAO takes automated actions using digital “smart” contracts based on the outcome of voting by its members. Voting is typically facilitated through the use of governance tokens residing on a blockchain. Thus, the decisions made by the DAO are open, transparent and decentralized.

DAOs have been used to pool resources of individuals and enter the business world. In 2022, the BIG3 basketball league gave the general public the opportunity to buy a fractional ownership stake in each of its 12 teams in the form of non-fungible tokens (NFT). Two notable DAOs, [DeGods](#) and [Krause House](#), purchased the largest controlling stake of their respective teams.

LinksDAO raised \$11 million in NFT sales in early 2022, granting each NFT holder a voting right. In February 2023, a reported 80.5% of the NFT holders [participated in the vote](#) to acquire the Spey Bay Golf Club in Scotland. The acquisition is now in the [formal due diligence phase](#) between LinksDAO and the club. Despite these recent successful entries of DAOs into the business world, it remains an open question as to how DAOs fit into and will be treated by the current legal framework across the U.S.

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Vermont, a first mover in 2018, [passed an act](#) related to blockchain business that allowed for the registration of Blockchain-Based Limited Liability Companies (BBLLCs). The state requires that the BBLLC specify the level of decentralization of the company and which participants are entitled to member and management rights in the BBLLC.

The “Wyoming Decentralized Autonomous Organization Supplement Act,” passed in 2021, allows for DAOs to register in Wyoming as a DAO LLC and generally operate under the existing LLC laws in the state. This allows for a greater degree of predictability of the treatment of the DAO than in other jurisdictions. As with LLCs, the members of a DAO LLC are generally not personally liable for the debts or obligations of the organization. In Wyoming, if the DAO LLC fails to approve any proposal or take any action for a period of one year, the organization will automatically be dissolved under Wyoming law.

Similarly, a [Tennessee act](#) treats registered DAOs as LLCs. Tennessee creates a special decentralized organization status for LLCs that inserts the statutorily-required statement into their articles of organization. These special status LLCs are denoted as either a “DO,” “DAO,” “DO LLC,” or “DAO LLC.” The special status entities operate as a normal LLC with respect to personal liability for its members.

The “Utah Decentralized Autonomous Organizations Act,” passed in June 2023, takes a much different approach to DAOs. It allows for the creation of a Limited Liability Decentralized Autonomous Organization (LLD). The act requires the certificate of organization, name and address of the individual that is the organizer of the DAO, although the act does provide for a request to redact this information from any public disclosure. The individual members of the DAO are only liable for the on-chain contributions that they commit to the DAO. However, if a judgment or order is entered against the DAO, those that vote against compliance may be liable for monetary payments in proportion to their share of rights in the DAO.

Despite the growing clarity within certain states as to how DAOs are to be treated, most actions of a DAO are “decentralized” and operate almost entirely on the internet. As such, the DAO, its members, or its actions may touch numerous jurisdictions.

For example, a 2022 case brought by the U.S. Commodity Future Trading Commission (CFTC) filed suit against the Ooki DAO, focused in part on the DAO’s connections to California. The DAO was alleged to have operated an exchange that allowed for margin (leverage) trading of digital assets. The exchange began as bZeroX, LLC, transferred ownership of the software protocol to bZx DAO, and subsequently renamed bZx DAO to Ooki DAO. According to the CFTC complaint, the founders had believed that transferring ownership to a decentralized organization would insulate the protocol and DAO from compliance with U.S. state and federal laws. The judge determined, under California and federal law, that the DAO was not operating as any specific legal entity, but rather as an unincorporated association of individuals. As such, the judge allowed service of process against the DAO by posting the summons document onto the Ooki DAO online discussion forum and help chat box. Representatives of the Ooki DAO failed to appear before the court and [an order granting](#) default judgment was entered June 2023.

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Despite the fact that the Ooki DAO case ended in a default judgment, charges were brought against the DAO in a jurisdiction that did not have established DAO LLC or LLD laws. It is clear that several states have made proactive efforts to accommodate DAOs in their legal framework. However, the nature of the internet (and the decentralized manner in which DAOs operate) leaves open the possibility in the foreseeable future that DAOs or their members may be subject to the laws of states that are not favorable to DAO governance or their overall organizational structure.

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